S. HRG. 100-681

DEPARTMENT OF DEFENSE/STRATEGIC DEFENSE INITIATIVE ORGANIZATION COMPLIANCE WITH FEDERAL ADVISORY COMMITTEE ACT

HEARING

BEFORE THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

SECOND SESSION

APRIL 19, 1988

Printed for the use of the Committee on Governmental Affairs

U.S. GOVERNMENT PRINTING OFFICE

85-796 WASHINGTON : 1988

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

S401-51

COMMITTEE ON GOVERNMENTAL AFFAIRS

JOHN GLENN, Ohio, *Chairman*

LAWTON CHILES, Florida
SAM NUNN, Georgia
CARL LEVIN, Michigan
JIM SASSER, Tennessee
DAVID PRYOR, Arkansas
GEORGE J. MITCHELL, Maine
JEFF BINGAMAN, New Mexico

WILLIAM V. ROTH, JR., Delaware
TED STEVENS, Alaska
WILLIAM S. COHEN, Maine
WARREN RUDMAN, New Hampshire
JOHN HEINZ, Pennsylvania
PAUL S. TRIBLE, JR., Virginia

LEONARD WEISS, *Staff Director*
LORRAINE P. LEWIS, *Counsel*
ELISE J. BEAN, *Counsel, Subcommittee on Oversight of Government Management*
JO ANNE BARNHART, *Minority Staff Director*
MICHAL SUE PROSSER, *Chief Clerk*

CONTENTS

Statements of: Page

Senator Glenn 1
Senator Levin 3

WITNESSES

TUESDAY, APRIL 19, 1988

David O. Cooke, Deputy Assistant Secretary for Administration, Department of Defense, accompanied by Arthur H. Ehlers, Director, Organizational and Management Planning, and Committee Management Officer 6
William Carroll, General Counsel, Strategic Defense Initiative Organization 9
David L. Parnas, Ph.D., professor of Computer and Information Sciences, Queen's University, Ontario, Canada 28
Rosslyn Kleeman, Senior Associate Director, General Accounting Office, accompanied by Greg Ziombra, Assignment Manager, General Government Division, and Lynn Gibson, Senior Attorney, Office of General Counsel 33
Paul T. Weiss, Associate Administrator for Administration, General Services Administration, accompanied by James Dean, Director, Committee Management Secretariat 37
F. Gary Davis, Chief Counsel, Office of Government Ethics, accompanied by Donald Campbell, Deputy Director 39

ALPHABETICAL LIST OF WITNESSES

Carroll, William:
Testimony 9
Prepared statement 61
Responses to written questions submitted by Senator Glenn 87
Cooke, David O.:
Testimony 6
Prepared statement 45
Responses to written questions submitted by Senator Glenn 49
Davis, F. Gary:
Testimony 39
Prepared statement of Frank Q. Nebeker 151
Responses to written questions submitted by Senator Glenn 160
Kleeman, Rosslyn:
Testimony 33
Prepared statement with attachments 104
Responses to written questions submitted by Senator Glenn 132
Parnas, David L., Ph.D.:
Testimony 28
Prepared statement 94
Responses to written questions submitted by Senator Glenn 102
Weiss, Paul T.:
Testimony 37
Prepared statement 135
Responses to written questions submitted by Senator Glenn 145
Ziombra, Greg: Testimony 33

APPENDIX

Prepared statements of witnesses in order of appearance 45
SDIAC Snapshot, as of April 1, 1988, chart 162
Chart concerning Eastport Study Group 163
Selected documents related to SDIO and DOD advisory committees 164

DEPARTMENT OF DEFENSE/STRATEGIC DEFENSE INITIATIVE ORGANIZATION COMPLIANCE WITH FEDERAL ADVISORY COMMITTEE ACT

TUESDAY, APRIL 19, 1988

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 2:15 p.m., in room SD-342, Dirksen Senate Office Building, Hon. John Glenn (Chairman of the Committee) presiding.

Present: Senators Glenn and Levin.

OPENING STATEMENT OF SENATOR GLENN

Chairman GLENN. The hearing will be in order.

I know it is usually not good to start off any meeting with an apology, but I will apologize anyway. We have the Republican and Democratic caucuses at noon on every Tuesday and they are supposed to be over in time for us to get our hearings started by 2 o'clock if we wish to do so. Unfortunately, the caucus ran over today and so we were not able to start on time. I got here just as fast as I could, and I apologize to those who have been waiting.

This is the Committee's second hearing on the Federal Advisory Committee Act. FACA was enacted to create a public system to account for and manage the thousands of formal and informal groups providing advice to the executive branch. The Committee's review of FACA's system reveals that much of it has worked well for the past 15 years.

However, questions do linger about Congressional intent with regard to the scope of the Act's coverage and the exact nature of fundamental requirements it imposes on Federal officials. This Committee has had a long history of dealing with FACA. I remember very well when I first came on the Committee we looked into FACA and found some 1,600 boards, commissions, committees, councils, advisory groups in existence. By going back through them and applying some of the existing regulations, we were able to eliminate 400. Some of them that had been hanging on as anachronisms that did not really do much good but were still in existence, were still costing us money. We saved several million dollars, we estimated at that time, by making sure that those were terminated.

Since that time, of course, we have depended upon FACA to do some of that job for us with occasional reviews by Congress. And so

today the Committee will be examining advisory committees located in the Department of Defense and in the Strategic Defense Initiative Organization, SDIO.

In particular, we will explore the extent to which these agencies have complied with FACA and related DOD regulations, including those on standards of conduct. I also wanted to start off today by commending Senator Levin and his staff for the excellent work they have done for this hearing. They have been working on some of these issues for over a year, sifting through all of the evidence and all the documents, and doing interviews, and their efforts have certainly paid off with what looks to be a very interesting discussion this afternoon.

As part of this hearing we will once again consider how the Act's balanced membership requirement is implemented. In 1983, the DOD Inspector General and the House Government Operations Committee recommended that DOD delineate criteria for achieving balance on advisory committees and document the reasons why individuals were selected for advisory committees. The General Accounting Office will testify today that this has basically not been done.

As a result, the Department's compliance with this requirement remains open to question. I note that since our last hearing on this subject one more Federal District Court judge called on to interpret this provision has commented that the requirement of FACA that advisory committees be fairly balanced "embodies inherent conceptual and practical difficulties."

So, this very clearly puts the burden on Congress as well as on GSA to resolve any such difficulties inherent in the Act, GSA being the organization within Government charged to administer this Governmentwide.

Another area of confusion involves the scope of the Act's coverage. Today we will focus on SDI's use of advisory groups, many of which are created under contract with third parties such as schools or universities or think tanks. GSA will testify that where an agency contracts for the creation of an advisory group and the group reports directly to a Federal official and the contractor provides only administrative support to the group, then the group is subject to FACA. This testimony should send a clear signal to all agencies that such advisory committees must be chartered and must comply with FACA's open Government requirements.

Finally, we will be looking at the ethics rules which govern DOD and SDIO advisory committees. Although FACA requires that the work of an advisory committee not be "inappropriately influenced by any special interest," FACA is silent on how this goal is to be achieved.

Now, there are occasions when it will be necessary to have members of an advisory committee who may have a conflict of interest in order to obtain a balance of viewpoints on the Committee. Agencies must recognize that those members are being given an inside track to important decisions and decisionmakers which creates the appearance of allowing them to have an unfair advantage over their competition.

DOD has recently addressed this problem by issuing an improved directive on standards of conduct which requires each member of

an advisory committee to file a financial disclosure form. What we are concerned with today is how well DOD and its components are enforcing its own ethics rules. We need to be sure that the advice being given to the Government benefits the Government and not the advisor.

I said, Carl, before you arrived, that we appreciated the work that you in particular have done personally—you and your Subcommittee—have done on this. You have worked on this for over a year and have taken a leading role in seeing that the requirements of FACA are carried out, and that is what this series of hearings is aiming to do, to see that FACA's requirements are carried out, and you have played a very key role on that.

And before we get to our witnesses for the day, I would add one other thing. This is not a Subcommittee meeting. It is a meeting of the full Committee because we felt the issues are that important. And while Senator Levin has addressed this on his Subcommittee, today's meeting is a meeting of the full Committee. I have to leave for another appointment shortly and Senator Levin will be chairing this.

Carl, we appreciate the great work you have done on this over the past year.

OPENING STATEMENT OF SENATOR LEVIN

Senator LEVIN. Thank you, Mr. Chairman. I am grateful not only for the kind remarks but for your leadership in this area and in a whole host of related areas relative to the ethics laws, to the way in which Government works. You are determined in this series of hearings on the Federal Advisory Committee Act to see how one aspect of our Government is functioning and you are determined, as you always are, to see that our laws are obeyed. I commend you for your determination.

Today's hearing, as you have mentioned, Mr. Chairman, focuses on the advisory committees of the Department of Defense and SDIO. Under the Federal Advisory Committee Act, advisory committees, regardless of which agency creates them, must be balanced, fair, open and free from inappropriate influence.

Advisory committees play an important role in shaping Federal policy, including policies on the national defense. To utilize these committees, DOD and SDIO must comply with basically two sets of rules. The first is the Federal Advisory Committee Act, or FACA, which imposes such management controls such as balanced membership selection, recordkeeping and salary limits. The second set of rules is the Federal ethics rules, including DOD's standards of ethical conduct.

Five years ago, in 1983, Congress took a hard look at how DOD was managing its advisory committees and did not like what it found. One key Navy advisory committee was ignoring FACA altogether. Others engaged in poor ethics procedures, questionable procedures for selecting members, and inadequate recordkeeping. Many had members with apparent conflicts of interest.

The DOD Inspector General, the GAO and the House Government Operations Committee all issued critical reports on the situation. DOD promised to improve. Part of that promise was a pledge

to review in a 3-year period every DOD advisory committee for compliance with FACA.

Today we are going to examine whether in fact DOD has improved. While some of the testimony we are going to receive will document better practices, other testimony is not so comforting. GAO will testify about a disturbing trend in the committee review program which DOD promised to implement in 1983. That effort has declined from 25 committee reviews in 1984, to 17 in 1985, to 8 in 1986, to 6 in 1987, and to 0 so far in 1988.

That means that 31 of DOD's 60 or so advisory committees have been reviewed in the last 3 years, about half of the number promised. In other words, the oversight of advisory committees promised by DOD in 1983 has not taken place.

Today's hearing is also going to examine SDIO's advisory committees. SDIO was not in existence when Congress took that look at DOD in 1983. It was created soon after. In fact, it was created so soon afterward and has since utilized so many advisory committees that it should be a model in its familiarity with and its implementation of rules governing advisory committees. Unfortunately, the opposite is the case.

SDIO has repeatedly violated FACA by using advisory committees without chartering them as required by the law. These unchartered advisory committees have left incomplete or missing records of their deliberations and recommendations. They have had no cost controls or termination procedures. Their members have failed to file the financial disclosure forms required of DOD advisory committee members. We believe some members have been paid up to four times the amount allowed under FACA.

We will look in particular at one unchartered committee called the Eastport Group, which advises SDIO on computer and battle management issues. This outfit which talks, walks and looks like a Federal advisory committee, does not comply with FACA or DOD's standards of conduct. It has no charter, does not keep minutes, and does not require members to file financial disclosure forms or disqualification statements. We believe some of its members are paid $1,000 per day—about four times what FACA allows.

In addition, there has been a questionable award by DOD of a contract to carry out certain Eastport Group recommendations. Here is the factual foundation for why I am concerned.

Two of the Group's eight members, Dr. Danny Cohen, the Group's chairman, and Dr. David Mizell, are employees of the Information Sciences Institute, or ISI, an institute affiliated with the University of Southern California.

In 1986 and 1987, ISI was selected to receive multimillion dollar contracts to perform SDI research related to recommendations made by the Eastport Group. The 1986 contract award was based on an unsolicited proposal submitted by Dr. Cohen on behalf of ISI. The proposal was submitted in December of 1985, within 2 weeks of the public release of the Eastport Group's report containing the recommendations which were the basis for the proposal.

ISI sent this unsolicited proposal to the Office of Naval Research, ONR, directed to the attention of Dr. Richard Lau, an ONR employee who also just happens to be a member of the Eastport Group. ONR accepted the proposal under a program for research

projects to improve naval operations, even though the proposal concerns SDI and did not even mention naval operations. ISI got a 3-year contract for $5.3 million. Dr. Lau was named the scientific officer who would oversee the research effort.

In 1987, a magazine article criticizing the award to ISI due to possible conflicts of interest prompted a review of the procurement. An undocumented decision by ONR and SDIO led to a restructuring of the contract in July of 1987 which ended the research effort. Three days later, ONR issued a Request for Proposals to followup on the research performed under the first contract. In December of 1987, ISI was selected for the second contract, even though its bid was significantly higher in cost than a competitor. ISI's bid won due to a slightly higher score on technical merit given by a three-person ONR technical evaluation committee chaired by Dr. Lau.

In sum, Dr. Lau serves with Dr. Cohen on Eastport which recommended certain SDI research. Dr. Cohen's employer submitted an unsolicited proposal to ONR to do that research. Dr. Lau, an employee of the Office of Naval Research, participated in awarding the requested contract to Dr. Cohen's employer under a program for naval—not SDI—research. When that award was questioned in the press, ONR terminated the contract. But 3 days later, ONR issued an RFP, a Request for Proposals, for another contract on the same work and again selected Dr. Cohen's employer based on the recommendation of a technical evaluation committee headed by Dr. Lau.

These events raise questions about conflicts of interest, appearances of conflicts of interest, and possible self-dealing. They demonstrate the importance of rules regulating the conduct of advisory committees. Where an advisory committee like Eastport ignores FACA and operates without a charter, it also escapes disclosure requirements and other rules aimed at avoiding conflicts of interest. That should not happen.

Finally, we are going to hear about SDIO's most important advisory body, the SDI Advisory Committee or "SDIAC" that, while formally chartered under FACA, is not complying with key FACA and conflict of interest rules. Evidence indicates that all 12 SDIAC members began work before receiving formal appointments to the committee. That means they began work before becoming subject to DOD's standards of conduct and the criminal conflict of interest laws.

Three members, or 25 percent of the committee, still operate without formal appointments, even though they have worked for the committee for periods of 1 and 2 years—meaning they still operate outside DOD's standards of conduct and the conflict of interest of laws. Nine SDIAC members began work before filing required financial disclosure forms and all 12 began work before SDIO reviewed their forms, despite financial affiliations with firms doing SDI-related work. Two members still do not have any financial disclosure forms on file.

Now, these events took place in the context of potential conflict of interest problems. Of the 10 members who have filed financial disclosure statements, 5 said they were paid consultants of firms, institutions or schools doing SDI-related work; 6 were directors or

trustees of such entities; 8 were stockholders in such companies, and 2 had other types of financial relationships with these entities.

One SDIAC member is a paid consultant of seven firms doing SDI work, a director of one, and a stockholder in seven. One company for which that member is both a consultant and stockholder is a closely held, small business whose work depends to a significant degree on an SDI contract. Yet this member's year-old financial disclosure form has yet to be reviewed by SDIO, and he is yet to file any disqualification statement.

SDIAC's poor record of compliance with conflict of interest rules is the worst of all the DOD advisory committees examined during the staff investigation. Given these disturbing facts, we must ask what SDIO is actually doing to ensure the integrity of the SDIAC through compliance with DOD's standards of ethical conduct.

The bottom line is that SDIAC has failed repeatedly to comply with the legal requirements of FACA and DOD's conflict of interest rules.

FACA serves an important purpose in maintaining the public's confidence in the Government's use of outside advisers. DOD's compliance has been begrudging and, even then, promises to Congress have been broken. SDIO's compliance has been dismal and requires a major overhaul.

I happen to support the proper use of Federal advisory committees. A government needs the wise counsel of advisors. But the message we are sending today is that DOD and SDIO must either operate their advisory committees in accordance with the rules designed to ensure objective, high-quality advice and the absence of conflicts of interest or just quit using them. It is that simple.

Thank you.

Chairman GLENN. Thank you very much, Senator Levin.

Our first panel this afternoon is David O. Cooke, Deputy Assistant Secretary for Administration, Department of Defense, accompanied by Arthur H. Ehlers, Director, Organizational and Management Planning, Defense Committee Management Officer, and William Carroll, General Counsel, Strategic Defense Initiative Organization.

Mr. Cooke, you can lead off with your testimony, please.

TESTIMONY OF DAVID O. COOKE, DEPUTY ASSISTANT SECRETARY FOR ADMINISTRATION, DEPARTMENT OF DEFENSE,[1] ACCOMPANIED BY ARTHUR H. EHLERS, DIRECTOR, ORGANIZATIONAL AND MANAGEMENT PLANNING, AND COMMITTEE MANAGEMENT OFFICER

Mr. COOKE. Thank you very much, Mr. Chairman, and Senator Levin. I am pleased to have the opportunity to be with you. Also I am very pleased to have with me Mr. Carroll, the General Counsel of SDIO, who can speak with particular reference to some of Senator Levin's comments.

I respectfully disagree with Senator Levin about the record of DOD in administration of the Federal Advisory Committee system.

---

[1] See p. 45 for Mr. Cooke's prepared statement.

As a matter of fact, the GAO and IG reports you referred to in 1983, Senator, looked at only the Defense Science Board and several other related scientific advisory committees. They did not look at the great bulk of our 61 committees, all of which are operating I think very clearly within the limits of the statutes and, as a matter of fact, as you know, we review each committee and its charter at least once every two years when we recharter the organization and take them all through a full-scale review, including a review of its membership and their balance.

In addition, it is true that in 1983 we did set as an objective a complete review of all committees. In a 3-year period, we have completed some 56 of those reviews, as time and our staffing conditions have permitted, and we are continuing the reviews. These are separate and apart from the review we conduct every 2 years as a result of the rechartering of the committees.

But I do agree with you about the value that the advisory committees play generally in the defense and our national security programs. We are receiving the services of high-caliber experts at bargain rates.

Let me tell you very briefly, though—and, with your permission, Mr. Chairman, I will merely hit a couple of highlights and if you would allow the insertion of my statement in its entirety in the record, I would appreciate it.

Chairman GLENN. You entire statement will be included in the record. You can summarize it as you feel appropriate.

Mr. COOKE. As I said, we have 61 DOD advisory committees. Before a committee is established, a sponsoring official—and by a sponsoring official, I mean an official at the level of the Secretary of Defense, Secretary of a military department, the Chairman of the Joint Chiefs or an Under Secretary or an Assistant Secretary or the director of a defense agency such as the Director of SDIO, must see a need and request the establishment of a committee.

That request is examined first of all within that individual's organization by a committee management officer. The committee management officer in turn must deal with Mr. Ehlers, who is the overall DOD Committee Management Officer. Each committee itself has an executive secretary who is responsible for the daily operations of that committee.

Our DOD Directive 5105.18, entitled "DOD Committee Management Program," provides the overall policy guidance for the programs. Copies, of course, have been furnished to your staff.

In addition, we have implementing instructions and regulations and have issued policy memoranda as necessary. Now, the arrangement works in part because Mr. Ehlers and his staff deal with the organization's committee management officer and indeed the executive secretary of the proposed coordinating committee and work with them on the charter of the committee, the functions of the committee and the like. It works well, too, because we deal very closely with the Secretariat of GSA. Mr. Weiss is here to talk to you about their role, so it is an integrated lock-step arrangement and we have been able in working with GSA, without exception, to negotiate mutually agreeable solutions in the rare cases where GSA has some questions about the charter or the purpose of the committees.

Now, as in the case of any widespread program, problems arise in the administration of DOD advisory committees. Because the arrangement I have sketched for you is centralized with policy, direction and oversight on top and decentralized execution—by decentralized execution, we look to the organization's committee management officer and the day-by-day executive secretary of the committee to insure the proper expenditure of funds, the keeping of adequate minutes, and the rest of the requirements of the FACA, but when they do arise, we do address them promptly.

You referred to the findings of the IG and GAO back in 1983. Very briefly, the IG report on the Defense Science Board on July 7th said that meetings were not always properly announced in the Federal Register, that the minutes of meetings and reports were not required at a central location, the minutes of the meetings were not prepared in the detail that at least that the IG thought was necessary and suggested that the designated Federal officials should be better aware of the laws and procedures, and they recommended, of course, that the Defense Science Board operations be reviewed periodically for compliance.

As part of the actions taken to correct that problem, operating procedures were issued by the Defense Science Board executive officer to the Defense Science Board military assistants on October 21, 1983. Guidelines were issued by the Defense Science Board Chairman and the Defense Science Board Task Force Chairpersons on February 15, 1984, addressing the criticisms I just outlined. The memo also addressed the balanced membership problem, appointment procedures, conflict of interest, and security, and, as I said, we have reviewed the Defense Science Board periodically since that time.

The GAO report on defense scientific advisory committees generally recommended that we should strengthen our financial disclosure and conflict of interest procedures, insure compliance with the requirement of timely Federal Register notice of meetings and keep better minutes of the meetings, and had some specific recommendations regarding the Navy Research Advisory Committee.

We, in actions to correct, announced the periodic review program, with special attention being given to science boards during the periodic review. As a matter of fact, with respect to the Navy Research Advisory Committee, we have reviewed it four times since the report, and I think you will find that it is line now.

We have also at times, when it has been brought to our attention that there are failures to follow procedure, have had no hesitancy in writing a memo saying in effect please get with it. Here is the typical language we have used:

> It has come to my attention that at least one meeting has been held by the committee and others have been planned. No action should be taken by or for the committee until after it has been properly established pursuant to the Act.

So I think that when matters come to our attention, we are zealous in pursuing them and correcting the situation.

Mr. Chairman, you referred to the fact that our conflict of interest regulations or our standards of conduct now require financial disclosures from committee members, since those standards of conduct were reissued in 1987.

I can only say with respect to advisory committees, in a memo I signed in 1979, we specified that members of advisory committees should file a conflict of interest statement, our DD Form 1555, so that has been in existence as a requirement to the sponsors of those committees since that time.

Now, with respect to establishing committees under contracts, we do not knowingly authorize nor is it the Department of Defense's policy to condone the formation of a Federal advisory committee with contracts or with any other third party. If such arrangements come to our attention, we will confront the sponsors involved and initiate actions to cancel them.

With respect to Eastport, we learned about Eastport less than two weeks ago and we are now taking under review the question of Eastport, Senator Levin, and indeed some of the other advisory organizations that you at least have characterized as public advisory committees to see in our judgment whether they do fall within the purview of the act.

You, of course, have expressed a high degree of interest in the Strategic Defense Initiative Organization and its compliance. Our records show that the SDIO has one advisory committee which was established in 1985, in accordance with the same policies and procedures as every other Defense Advisory Committee.

However, should you have any specific questions on the day-by-day operations of that committee or the other advisory-methods of obtaining advice that SDIO follows, why, we have with us, as I said, the General Counsel to speak for that organization.

That completes my statement, Mr. Chairman, and I shall be glad to answer questions now or hold it until you have had a chance to hear from Mr. Carroll, at your pleasure.

Chairman GLENN. Mr. Carroll, go ahead.

WILLIAM CARROLL, GENERAL COUNSEL, STRATEGIC DEFENSE INITIATIVE ORGANIZATION [1]

Mr. CARROLL. Mr. Chairman, Senator Levin, it is a privilege to be here before you today. My name is William Carroll, and I am the General Counsel for the Strategic Defense Initiative Organization [SDIO].

As Secretary Cooke has indicated, there is the one formally chartered SDI advisory committee. The work on establishing that committee started at about the same time that SDI was started as an agency within the Defense Department, in April of 1984, after consultations with the GSA and GSA's consultations with OMB. Approval was given at the end of 1984, and at the end of 1986 a similar process was followed and the approval of the committee for another 2 years was given in January of 1987.

I do have a formally prepared statement that I would like to submit for the record, if I may, Mr. Chairman.

Chairman GLENN. It will be included in the record in its entirety.

Mr. CARROLL. I will quickly summarize some of the major issues that were raised in the invitation letter.

---

[1] See p. 61 for Mr. Carroll's prepared statement.

I would like to talk a little bit about our education and counseling approach. Shortly after I arrived at the SDI organization, I furnished through the Office of Chief Scientist, which is our liaison within the organization, to the advisory committee a written explanation of the DOD Directive 5500.7, those provisions that implement the conflict statute at 18 USC 208, and furnished each of the members a complete copy of the complete DOD directive and advised the members, again through the Chief Scientist, of my availability to advise on specific questions that they might have.

Since that time, I have provided briefings to the SDIAC committee on DOD 5500.7. Within the agency, I have instituted an ethics awareness program. I meet each month with either one of the technical directorates, like the directed energy directorate or kinetic energy or one of the supporting directorates, like the comptroller or the contractor, and go through an entire presentation on the Ethics in Government Act, the DOD Standards of Conduct, and recently we have incorporated specific guidance on the requirements of the Federal advisory committee in that briefing.

When Senator Levin first asked our organization about groups that were providing advisory in some form or another to the SDI initiative going back to 1983, I asked each of the technical and support directorates to identify for me every directorate or every group that they had providing advice in some form or another.

When we got that review from each of the directorates, I identified two that were operating as advisory committees, that is, they were giving broad advice about the technical program and the objectives and they were not properly chartered and we immediately brought that to the attention of the director of the agency who subsequently ordered their termination.

Based on that review, we briefed the senior staff on the requirements and, as I say, we do have our monthly briefings and we have tried to educate the working staff as well on the requirements of the statute.

Finally, since September of 1987, I asked to be notified of any subcommittee and working group that has more than a couple of people that is going to meet for more than one meeting and I brief them on the requirements of DOD 5500.7.

With regard to the review of financial disclosure statements, as an organization we have identified as a material weakness in our overall internal management controls failure to process appointment papers for consultants in a timely manner. As I go into some detail in the report, we had one person who was processing all personnel matters within the Organization, including full-time civilian employees, military assignments, temporary military assignments, as well as consultant appointments. We had a backlog that was created by just having one person, it got exacerbated by that person leaving and going to another agency. Some of the functional officers tried to pick up some of the slack but not very well.

In February of this year, our support services directorate brought on one person with the principal duty of getting the paperwork processed on consultants, and I expect that with that appointment we will move a lot more quicker on getting all the financial disclosures and reviewing them and then having the disqualifications executed.

We were asked to comment on how we set up the committees outside of the Federal Advisory Committee Act, and I hope that by responding about our practice for reviewing contract advisory and assistant services we did not cause confusion.

As Secretary Cooke says, we simply do not intentionally, or knowingly set up committees outside the Federal Advisory Committee Act. And when we identified some that appeared to us to have been set up that way, we terminated them.

What we do have is an implementation of the DOD's directive on contractor advisory and assistance services. That directive places, in addition to the normal review of funding documents, a specific review by a senior SES person, our Deputy Comptroller, and that is a system that I believe would be the most likely avenue where somebody might try to set up what might look like an advisory committee under a contract, and I believe we have the mechanism to identify that now, and by no means do we consider contract advisory and assistance services as a means to avoid FACA.

I would like to reemphasize that, having put that implementation in place, I believe we are better equipped, should our advice and counsel to the technical staff not take deep root, I think we have a mechanism to identify any attempts that may be really attempts to set up an advisory committee.

As I indicated, we did report some groups that had been providing advice under contract. At the same time, we advised that advisory groups or what appeared to be advisory groups had been terminated, one of those being the scientists who were reviewing some general management concepts familiarly known as the Eastport group.

We have been asked—and I believe there are several questions—about why and how the Eastport group was established. In 1986, when I first heard of the Eastport group—we responded to a General Accounting Office inquiry about the Eastport group that had been requested by Congressman Mrazek. At that time, we interviewed the people who were involved in the process and, to the best that we were able to document, it was technical people talking to technical people. It was not a question of technical people avoiding the legal and contracting structure within the SDI Organization. Simply as SDI was started it did not have those functional responsibilities within the Organization.

We thought that the program could be and is still today in large measure carried out by using the contracting organizations within the military departments. After a couple of years of operating, the Director identified a need to have his own contracting capability, and in late 1985 he did establish a contracting directorate and I took a detail to the agency to set up a general counsel's office, subsequently becoming the general counsel.

In the spring of 1985, the technical officers within our systems group identified a concern about the performance of the first 10 architecture contracts that had been awarded to study the different approaches that might be used to link the various sensors and weapons into an overall strategic defense system. An early principle of the program was that a Strategic Defense System would not work if you develop sensors to see missiles in their various stages of flight and interceptors to knock them out, and then waited at

that point to figure out what the battle management capabilities or communications and the interfaces among them would be.

Our battle management officers believed that that was not being done under the architect contracts and some other broader aspects of our battle management program, and, looking around among the military departments with which we were working at that time, we were advised by some of the people at the Office of Naval Research that there were leading computer scientists within the country, some of whom had provided advice in these technological areas to the Advanced Research Project Agency, and that they should be brought in to look at the battle management aspects of the program, including the architecture contracts.

That having been identified as a requirement, they in parallel, surveyed the various contracting activities—again there was not an SDI contracting activity at that time—and located research contracts that the United States Air Force Office of Scientific Research had with some of the universities in several generic areas of research, including one for mathematics and information sciences. A contract in that field had been awarded to the University of Maryland that had provisions for the university to assemble panels to study specific problems, and that vehicle was selected for use.

Now, as matters turned out, the funds began their trip from the SDI Organization to that contracting activity in June of 1985, but the contracting process was not completed until November of 1985, at which point much of the work was already done. Again, that was reported to the General Accounting Office in 1986.

Part of that haste led to what I would call the conflict of interest mechanisms that were in that contract. By advisory committee standards, they would be considered a narrow conflict of interest, but for the people working on the problem at that time it was seen as a study contract, subject to the conflict rules that govern organizations as opposed to the individuals, and to implement those organizational conflict of interest rules, one of which is the organization basically does not evaluate its own work, the contract required the people who were evaluating proposals, or in this case some of the architecture contracts, not to have an interest in any of that work in which they were evaluating.

As I said, in the haste of putting the work together and the contracting process trailing it, the perfection of that mechanism was overlooked and they did not get the certifications from the members of the panel. To the best of our knowledge, however, it does not appear that that clause was violated in that we do not know that any of the members of that panel had any interest in those contracts which they were reviewing.

Again, it was somewhat of a narrow organizational conflict of interest prohibition and it did not prevent the members of the panel or their employers from submitting proposals under any SDI-related research contracts.

Now, the recommendations did include some broad recommendations beyond the interfaces and the linkages between the weapons and the systems in an SDS system and went off to talk about communications among the various organizations that are executing the SDI program, such as the Air Force Systems Command Space Division in Los Angeles, the Strategic Command down in Hunts-

ville, the Missile Test Range at Kwajalein and at White Sands Missile Range, and the need to have a communication network among all of these places, including some very sophisticated computer design. And it was that area that the Institute for Science and Information did follow up with a proposal and were selected for award by the Office of Naval Research.

As Senator Levin indicated, when a magazine article characterized that award as part of an "old boy network," the Office of Naval Research, the contracting, and legal people met with the scientific officers and looked at the award process. They did not look at the conflict issues so much as the procurement procedure by which the contract was determined to have been competitive under the newly established recognized, broad agency announcement procedures, and the contracting and legal staff did not really feel that communications for the SDI fit under the solicitation, if you will, for long-range naval research, and at that point it was determined that a better procurement action would be to terminate or reduce the scope of that award as it had been made and recompete for essentially the research that had not been completed under that contract and related growth and requirements that had come out of the research.

As you indicated, Senator Levin, the resolicitation was issued on July 23, 1987, the Office of Naval Research received three proposals. I believe all the documentation leading to the negotiating team's and actually ONR's position to select the Institute for Science Information has been furnished to the Committee, and at the time we furnished it the award had not been made. It was under review by the professional staffs, and now it is my understanding that the management of the contracting agency, the Director of Contracts, having looked at the selection process, has determined that perhaps the award is not ready and I believe they may be conducting further negotiations, but that is a matter that the Office of Naval Research has underway.

When the General Accounting Office finished its review of the contract that the Air Force Office of Scientific Research had issued to the University of Maryland, although they concluded that it was not an improper personal services contract, they did recommend that it not be a vehicle for use of procurement of experts and consultants.

At that point, the SDI Organization did have a contract in negotiation with ANSER, a nonprofit organization which had traditionally provided research to the Air Force, and that contract was to provide technical support to the Systems Office within SDI.

It seemed logical at the time to let ANSER use the expertise that had been gained under the University of Maryland contract and use those people. Quite frankly, if I had to review that again, I think I would have been better advised to ask Secretary Cooke's staff to take a look at that. We did not do that at the time. We relied on the analysis and the report that had been furnished to the GAO.

The Eastport group under the ANSER task last met about a year ago, this time in April of 1987, and they have not met since. At the time we submitted our statement, the decision had not been made as to whether to fund additional study tasks under the ANSER

contract. That decision has been made now and it will not be funded, so in effect, denouement of the Eastport group, which really occurred about a year ago, is official now.

That essentially completes my statement, Mr. Chairman, and I too would be glad to respond to any questions.

Senator LEVIN [presiding]. Thank you, Mr. Carroll.

First, a question for Mr. Cooke about the committee reviews in general. As I understand it, Mr. Cooke, the DOD sent a letter to the GAO in April of 1984, with a copy to the Congress, indicating that the DOD was going to "establish a program to review periodically the records of each DOD advisory committee, to insure compliance with FACA and all applicable rules and regulations. This review, a continuous process, will occur at least once every 3 years." That was the commitment that was made back then.

Now, this is what I understand the figures are. For 1984, 25 reviews—do you have the figures in front of you?

Mr. COOKE. I am sure I do some place.

Senator LEVIN. Well, perhaps you could make note of this as I read them, and tell me if I am wrong anywhere—25 reviews in 1984—

Mr. COOKE. I think you are quoting from something I supplied the Committee, so I will accept them as accurate.

Senator LEVIN. I know, but I want you to do some addition for me—25 in 1984, 17 in 1985, 8 in 1986, 6 in 1987, and 0 so far in 1988. Now, looking at the last 3½ years, approximately, looking at 1985, 1986, 1987, and what we have done so far in 1988, that is about 3¼ years, you have got 17 in 1985, 8 in 1986, that is 25 so far, and 6 in 1987, for a total of 31. So for the last 3 years plus, you have done 31 reviews. Is that correct?

Mr. COOKE. Yes. I show 25, 17, 8 and 6, for a total of 56, yes.

Senator LEVIN. Just look at the last 3 years, if you would.

Mr. COOKE. 17, 8 and 6.

Senator LEVIN. That is 3 years, and that total is 31, correct?

Mr. COOKE. Yes.

Senator LEVIN. So for the last 3 years plus, you have done 31 reviews.

Mr. COOKE. May I point out, Mr. Chairman that that is in addition to the fact that we review each committee every two years at the time it is either rechartered or it lapses, so the reviews you are talking about are in addition to the normal committee reviews at the end of every 2 years.

Senator LEVIN. Are those the reviews you promised to make in 1984? Is that correct?

Mr. COOKE. Our Committee Management Officer also points out that in addition there is a comprehensive review of every committee at the end of 1 year, so these are additional reviews. I will candidly admit that we did not make as many in these additions as we had set as our objective. I can only say that we had other priorities and a rather small staff that Mr. Ehlers heads up but I would not want to leave you with the impression that the only reviews we have made in the last 3½ years are the 31 reviews you have talked about.

Senator LEVIN. But were those the FACA compliance reviews which you committed yourself to do in 1984?

Mr. COOKE. Well, these reviews of each committee look at the FACA compliance, too, do they not?

Senator LEVIN. Are you saying that you have reviewed all 61 committees in the last 3 years for FACA compliance as you committed to do in April of 1984? That is my question.

Mr. COOKE. Mr. Chairman, this is our Committee Management Officer, Mr. Ehlers, and——

Senator LEVIN. There is one bottom-line question: Have you looked at all 61 of these committees in terms of the FACA compliance review you committed to do in April of 1984, in the last three years?

Mr. EHLERS. Not in the FACA compliance review sense that you are talking about, sir.

Senator LEVIN. And that is what you committed to do in April of 1984?

Mr. EHLERS. That is correct.

Senator LEVIN. So just to get it straight and fair and accurate, for whatever reason, you may have been busy elsewhere, in the last 3 years you have not reviewed all 61 committees for FACA compliance?

Mr. EHLERS. Not those separate reviews that we are talking about, that is correct, sir.

Senator LEVIN. The ones that you were talking about in 1984, right?

Mr. EHLERS. That is right.

Senator LEVIN. OK. That is straight-forward.

Mr. EHLERS. But I do want to point out that the reviews that we have made are the reviews we make on an annual basis and, in addition to that, every 2 years when we review a committee as to whether they should be continued or not, we make a review at that time also, so those are on top of the FACA compliance reviews to which you are referring to.

Senator LEVIN. But that is a different subject.

Mr. EHLERS. Well, it is——

Senator LEVIN. It is not the subject of this hearing. This hearing is a hearing into FACA compliance. In 1984 April, we got a commitment out of DOD that there would be a FACA compliance review every 3 years for all of these committees. All I am saying is in the last three years, only 31 of the 61 have been reviewed for FACA compliance.

Mr. EHLERS. Yes, sir, I think we are in agreement.

Senator LEVIN. OK.

Mr. EHLERS. I think we understand what we are talking about.

Senator LEVIN. Now let us talk about the chartering issue. Let me again address this to you, Mr. Cooke. FACA covers any committee—and here I am quoting from FACA—"or other similar group . . . which is . . . established or utilized by one or more agencies in the interest of obtaining advice or recommendations."

Now, let me read to you from the 1986 Eastport Group report: "The Eastport Study Group . . . was initially appointed in 1985 by the Strategic Defense Initiative Organization. . . . The Eastport Study Group met during 1985 and rendered a report to the Director [SDIO], in December of that same year. Many of the recommendations contained in the report have had a significant impact on

the direction that the battle management/command control and communications program has taken. Consequently, the [SDIO] decided to continue the Eastport Study Group in 1986."

Notice so far that I said three things: The Eastport Study Group was initially appointed by the SDIO, that they rendered a report in 1985 to the Director of SDIO, that the recommendations, or at least many of them, contained in the report have had an impact on the battle management/command control and communications programs of SDIO, and that consequently the SDIO decided to continue the Eastport Study Group in 1986. That is so far.

Now, let me read you a few more sentences about their connection to SDIO: "In 1986 the Eastport Study Group enjoyed a very close working relationship with not only the Director [SDIO], but also with the members of his staff. Consequently, there was continuous information exchange[d] between members of the [SDIO] and the Eastport Study Group. This obviated the need for formally communicating findings and recommendations of the Eastport Study Group."

Now, it is obvious to anybody reading their own report that the committee was established by the SDIO and sent reports to the SDIO. My question is why wasn't Eastport chartered under FACA?

Mr. COOKE. Mr. Chairman, as I said, the first time I heard of Eastport in my role, or Mr. Ehlers, for that matter, as Committee Management Officer, was a couple of weeks ago, and what you read, I am inclined to agree with you, it certainly should have been. We were not informed of that.

Senator LEVIN. Aren't you in charge of FACA compliance for DOD in general?

Mr. COOKE. Yes, but we have to be——

Senator LEVIN. Shouldn't this have been brought to your attention? There was a public article questioning the nonchartering of Eastport about a year ago.

Mr. COOKE. I can only say that I was not advised, nor was Mr. Ehlers, of the existence of Eastport until several weeks ago.

Senator LEVIN. Well, let me ask Mr. Carroll. Mr. Carroll, in light of the facts that Eastport was established by the SDIO, that it reports to the SDIO, that it has a close working relationship with the director and staff of SDIO and have a continuous information exchange with SDIO, would you tell me why the Eastport Group was not chartered under FACA, which requires that any committee established or utilized by one or more of the agencies in the interest of obtaining advice or recommendations must be chartered?

Mr. CARROLL. The best I can tell you is what occurred, Senator. The technical officers were not trying to avoid any processes, as near as I could tell when I looked into it when the GAO asked us about it. They——

Senator LEVIN. What were they doing?

Mr. CARROLL. They were——

Senator LEVIN. I mean if they were not trying to avoid FACA, just what were they doing?

Mr. CARROLL. What they were trying to do was get a review before the director of the agency down-selected from the 10 first-phase architecture contracts into the next 5, which was an important event in the entire SDI research project, particularly in the

battle management area, is they wanted to get a review of why was it so hard for the companies in both the hardware and the software to get a handle on this idea of developing the battle management capabilities, and in talking to the scientists——

Senator LEVIN. They wanted advice.

Mr. CARROLL. Well, they wanted a technical review, I think.

Senator LEVIN. Why horse around with words? They wanted advice, didn't they? Didn't they get advice?

Mr. CARROLL. They got advice and recommendations, yes, they did.

Senator LEVIN. Doesn't FACA cover any committee, by its own words, which is established in the interest of obtaining advice or recommendations? Isn't that the purpose of FACA?

Mr. CARROLL. Yes, it is.

Senator LEVIN. Did you check with DOD or GSA on this issue, as to whether or not this ought to be chartered under FACA?

Mr. CARROLL. No. As I said, they looked for how would you get the outside advice from the Government and similarly they surveyed for technical people, they surveyed who can contract for us and they went to the Air Force Office of Research.

Senator LEVIN. Why didn't you contact DOD or GSA, given their responsibility of oversight of FACA, to see whether or not you should have chartered Eastport?

Mr. CARROLL. Well, at the time the technical people were basically working among themselves in the——

Senator LEVIN. That is the problem. "Technical people working among themselves"—that isn't any kind of an answer. That is not responsive. We want reports from technical people. They work among themselves, but they give reports to our agencies. Advisory groups are made up frequently of technical people. We have a good law which, for good reason, puts controls on advice to the government—advice which we pay for and which is supposed to be objective and balanced. That is the purpose of this law.

We want to avoid any suggestion that people who are giving us advice and being paid for it are giving advice which is intended to benefit them, and which they are going to seek contracts to do research on afterwards. We do not want people dealing with themselves. You call it technical people working among themselves. I do not care if they are technical or nontechnical people.

Mr. CARROLL. Well, if I could step back for half a second, sir, the program, particularly in its early stages, even now is very dependent on the execution of the program, in accordance with all relevant laws and regulations, by the military department agents that are carrying it out. You know, when you are asked why——

Senator LEVIN. That is more reason to follow FACA, not less reason. It is more reason to follow FACA. What you are saying is we are dependent on these very people to implement recommendations which they give to the Government. If that is the case, the least we can do is get disclosure forms of their financial interests.

Mr. CARROLL. And I have the benefit now, in hindsight, of asking "why did they do what they did at that time?"

Senator LEVIN. In all due respect, Mr. Carroll, it is not just hindsight. The same thing happened with the Fletcher and Hoffman Panels. We raised a question about those two panels, but they had

already completed their work so no particular action could be taken relative to them.

We raised questions about the Kinetic Energy and the Lethality panels. They were terminated after we raised those questions. I mean we sent a letter to General Abrahamson asking what is going on here, and General Abrahamson said, "Oh, my gosh, you're right." He said, "Terminating unauthorized committees"—let me just read the whole quote here. This is May 2, 1987—"During the assembly of data to respond to your request, I learned that committees had been established in 1985 and 1986 without proper approvals. [Here is] my letter formally terminating unauthorized committees."

The Eastport Group is not an isolated example and it is not a new example. It is not a matter of hindsight. This has been going on in the SDIO.

Mr. CARROLL. Sir, we reported in 1987 that that is when he learned about them and he terminated it.

Senator LEVIN. I know, but in 1987 you were dealing with Eastport through the whole year, right?

Mr. CARROLL. That is correct.

Senator LEVIN. They were in existence?

Mr. CARROLL. That is right.

Senator LEVIN. OK.

Mr. CARROLL. The initial establishment was not by the SDI Organization. As I said before, when SDI decided to continue that by having it a part of the overall support from the ANSER, I would have served the agency better had I not said that, yes, since GAO had found that work to be contractual, let us just put it under a contract, I would have been better served to bring it to the attention of Dr. Cooke and get the benefit of their advice.

Senator LEVIN. I have made reference to the Kinetic Energy and the Lethality panels, which General Abrahamson discontinued in early 1987 after I pointed them out to him. That is what he said in his letter.

Mr. CARROLL. In all due respect, what you did is you asked us to identify all groups that had been providing advice on the SDI initiative. What we did is we went to every director and said do not make your own judgments about whether these are a Federal advisory committee, you just tell us what groups you think you have providing advice. When they did that, I noticed those two as clearly operating as advisory committees and pointed it out to the Director and he terminated them.

Senator LEVIN. That is what I am saying.

Mr. CARROLL. Yes, sir.

Senator LEVIN. It took a request. According to his letter, "During the assembly of data to respond to your request, I learned that the committees had been established in 1985 and 1986, without proper approval. Here is my letter formally terminating unauthorized committees."

Mr. CARROLL. Yes, sir.

Senator LEVIN. Now, I have made reference also to the Fletcher and Hoffman Panels. Here is what apparently happened with the Fletcher and Hoffman Panels. These panels, may I remind all of

us, are the panels which advised the DOD to create the SDI program in the first place.

The persons responsible for setting them up consulted with the DOD General Counsel's Office about how to proceed. David Ream of your office told them about FACA. They did not want to comply with FACA. Later on, one of these persons, General Lamberson, proposed setting up the panels under an existing contract with a think tank as a way of obviating or avoiding the requirements of FACA.

Mr. Ream of your office specifically advised that that was a circumvention of the law. He wrote a memo about the incident to his boss, William Taft, who was then the General Counsel. But no one cancelled those plans, and both of the panels were set up under the contract with the think tank, which Mr. Ream of your office said was a circumvention of the law.

Mr. COOKE. Excuse me, Senator. David Ream belongs to the Office of General Counsel of the Department.

Senator LEVIN. I am sorry, I apologize.

Mr. COOKE. Not Mr. Carroll's department.

Senator LEVIN. I apologize. Mr. Ream of your office, Mr. Cooke?

Mr. COOKE. Not my office, the General Counsel's Office.

Senator LEVIN. I thank you. That is even a more pungent point. Mr. Ream said—and he has told us very specifically and his notes reflect that—he advised the DOD General Counsel that those two committees were being set up in circumvention of the law.

Were you there, Mr. Cooke, at that time?

Mr. COOKE. In my present position, yes. Was I involved in this? No.

Senator LEVIN. Do you remember the advice that Mr. Ream gave?

Mr. COOKE. No, I am not in the Office of the DOD General Counsel.

Mr. LEVIN. Well, what we are going to do is make part of the record extracts from the personal log of Mr. Ream from 1983, showing that: on April 11, 1983, he met with General Lamberson to discuss the problems of setting up this group; on the 13th he met with General Lamberson; on the 25th he met with General Lamberson's executive officer to discuss the study group; on the 31st of May he had another meeting; and then on June lst of 1983 he met with General Lamberson and others again, on which date his log says "Lamberson proposed improper use of [the IDA contract]; failure to follow [Federal Advisory Committee Act]." That is what Mr. Ream put in his logbook.

So what we have here, I am afraid, is a pattern. We have the advisory committees which actually recommended setting up the SDIO, being told by the General Counsel's Office in DOD that the way they were being set up was a circumvention of FACA. They went ahead anyway.

In late 1986 or early 1987, when we pressed General Abrahamson on a number of other advisory committees, he disbanded a couple of them which had been created in circumvention of FACA.

Today we are talking about still another SDI advisory group, the Eastport Group, which clearly violated FACA. I cannot see any possible excuse for not requiring them to be chartered, but I guess

what we will have to do in order to get your conclusion, Mr. Cooke, is to wait for you to give us your report on that. You say you are looking into it now.

Mr. COOKE. Yes, we are looking at the entire thing, and on the basis of what you read, I would be inclined to accept your characterization, not as to Fletcher and Hoffman, which I am not conversant with, but with respect to Eastport.

Senator LEVIN. There is a very, very troubling pattern here which I do not know how to get into with SDIO. It is maybe to a point where the GSA or the Inspector General in the Department of Defense needs to act as a receiver, to take over the supervision of advisory groups in the SDIO. I do not know of any other alternative.

Mr. CARROLL. May I try to respond?

Senator LEVIN. Surely.

Mr. CARROLL. Well, I would not see it exactly as a pattern, because the first incident that you talked of, there was no SDI Organization. The second two——

Senator LEVIN. You are talking about the Fletcher and Hoffman Panels?

Mr. CARROLL. Yes, sir.

Senator LEVIN. But where the General Counsel's Office told the people putting together those groups that they were circumventing FACA and should not do it, you do not consider that part of the pattern?

Mr. CARROLL. Well, I think that I would look at each of them in different terms and probably draw different conclusions. The groups that General Abrahamson terminated were not set up after somebody sought legal advice, and if what you are saying in——

Senator LEVIN. No, but the pattern is that DOD did not comply with FACA, that is the pattern.

Mr. CARROLL. Well, it is awfully broad.

Senator LEVIN. Pardon?

Mr. CARROLL. At that broad level——

Senator LEVIN. Well, that is what we are here for today, is to talk about DOD compliance with FACA.

Mr. CARROLL. Well——

Senator LEVIN. I mean we have got one lawyer in the General Counsel's Office whose notes reflect advice to the Fletcher and Hoffman Panels that they were circumventing FACA and they should not do it. Then we have General Abrahamson last year, after being asked to review the matter, saying, "Oops, we've got two other panels who violated FACA, we are going to cancel them." Now we have got the Eastport Group—I have reached a conclusion on that, you can reach your own conclusion.

That to me is a pattern and I do not know how to get out of that pattern, frankly, given the current approach inside the SDIO, except by urging the GSA or the IG to take over the oversight of the advisory groups. The reason why this is so important is something that I want to get to now.

Mr. COOKE. Senator, may I offer, certainly not an excuse but I think in substance some of the explanation. The President's decision on SDI was made in late 1983, it was put together by Defense with all haste, and as usual in putting together any organization,

maybe rightly or wrongly, you put together the technical experts first and then the administrators, like me and others who come in after the fact. I would think in the haste of getting on with the substantive job, with the sense of urgency that the President and the Secretary communicated, the technical people were not out to deliberately violate anything. I think that the worst that can be said of them, and it is no excuse, is that they showed ignorance of the law. They just went ahead when they needed technical advice and tried to get it.

Senator LEVIN. Well, I am not——

Mr. COOKE. I think since we have got Mr. Carroll on the scene, we have fleshed out staffing to ensure making consultant assignments and so forth, and the situation is far different than it was in the early hasty days.

Senator LEVIN. Except that a year ago you had a public article about Eastport and nothing was done there. By the way, when you talk about ignorance of the law, we have the advice of someone to the people setting up the Hoffman Panel and the Fletcher Panel, saying that they were proposing an improper use of a contract in order to avoid FACA. So it was not ignorance of the law in that case.

Mr. COOKE. I was defending SDIO, which was not in existence at the time of the Fletcher-Hoffman panels.

Senator LEVIN. I know, but the Fletcher and Hoffman Panels brought SDIO into existence, and the people who were putting together those panels were advised that they ought to comply with FACA. So it seems to me that is part and parcel of a pattern.

Let us talk about another example of this pattern. You do have one chartered advisory committee, the SDIAC, is that correct?

Mr. CARROLL. That is correct.

Senator LEVIN. Now, the SDIAC was established about 3 years ago in January 1985. For most of the time, it has had 12 members, but this chart over here to your left,[1] which we have prepared, shows that 3 of those 12 members, 25 percent of the committee, have been operating without formal appointments to the committee.

So that 3 out of 12 of SDIAC have never even been appointed to the SDIAC. Dr. Happer, who has been on the committee for more than a year, has had no appointment. Dr. Rosenbluth, who has been on the committee for about 2 years, has had no appointment. And Professor Nirenberg, who has been on the committee for about 2½ years, has had no appointment.

Without an appointment, these men are not subject to the DOD standards of conduct or to the criminal conflict of interest laws.

Why have not they been appointed?

Mr. CARROLL. Well, as I said, we have a big problem in getting consultants appointed on time. We——

Senator LEVIN. No, not on time. These folks have been on the committee for up to 2½ years but have never gotten a formal appointment so that they are subject to the conflict of interest laws.

---

[1] See p. 162.

My question is: Why haven't they been appointed? They have been serving on that committee, your one chartered committee.

Mr. CARROLL. We did not staff that. And we did not process the papers.

Senator LEVIN. I know. I am saying, why haven't they been appointed?

Mr. CARROLL. Because the work was assigned to one person who had all the other personnel processing to do for the agency, including the civilian full-time employees, the military full-time employees, and the military on TDY.

But that was identified last fall as a material weakness in our entire system. We do have a person whose principal duty is appointments and consultants. And I believe we will catch up with those appointments.

Senator LEVIN. I am sorry, I think you are misunderstanding me. These people have been serving for up to 2½ years. I am not sure what you are saying—that somebody has not had the time to file a piece of paper appointing these people?

Mr. CARROLL. That is what happened, yes.

Senator LEVIN. And you knew about that last fall, and they still have not been appointed. This is a piece of paper appointing people so they are subject to our conflict of interest laws, as required by FACA.

Mr. CARROLL. Yes, it is.

Senator LEVIN. Is there a pattern yet, Mr. Cooke?

Mr. COOKE. I think the pattern is one of poor administration, and not one of deliberate noncompliance.

Senator LEVIN. You have had no disclosure forms from two of these people on the SDIAC. We have no disqualification forms from 6 of these 12 people.

In all 12 cases, they actually began advising the U.S. Government prior to the filing of those forms that had to be filed in order that they would be bound by conflict of interest laws.

You say it is a pattern of poor administration, Mr. Cooke. I think this is frankly disgraceful.

This law is on the books. We require all our citizens to obey the law. Yet our own agencies are not obeying the law. Because, I emphasize, this is a chartered advisory committee, and that is the pattern.

Twelve out of twelve SDIAC members began advising the United States before they are even appointed. Three of the twelve have not been appointed up to 2½ years later. Two of them still do not have disclosure forms filed. And on and on.

Let me emphasize: This is not some area where there might be some technicality involved. We are in an area that has got potentially great conflicts of interest.

As you pointed out, Mr. Cooke or Mr. Carroll, these are people who are doing work for the Government, frequently, at the same time they are advising the Government as to what work should be done by outside people. You cannot have a much riper situation for a conflict of interest, and so you have got to be careful.

We are not saying these people shouldn't not serve on the boards. What we are saying is, to protect us, the people, we have

got to have certain disclosures and disqualification forms to avoid conflicts. That is what we are saying. And we do not have them.

Just to show you what the potential is here, of the financial disclosure statements that have been provided—some of them have been—there is one committee member who is a paid consultant of seven businesses and schools doing SDI work; a director of one of those businesses; and a stockholder in seven businesses doing SDI work, including a closely held private corporation, whose work relies to a significant extent on an SDI contract. Now, that person's disclosure form has never been reviewed by the SDIO as required; never been reviewed. He has never filed a disqualification statement.

There are 12 members of the SDIAC. That is the only—I repeat, the only—chartered advisory committee to the SDIO. SDIO has not reviewed that form.

I must tell you, with one committee to handle, that is the history. I think it is, as I said, a disgraceful record. Rather than just repeating that, what I am going to urge us to do here as a Committee is to ask the GSA, and the Inspector General, to take a look at the SDIAC administration, and to get that in shape.

We are not saying, and I emphasize, that there should not be an SDIAC. There ought to be, probably. They need plenty of outside advice in the SDIO. But it has got to be given in a way that has public confidence, and that record does not produce any public confidence.

Let me give you one more example, and then we will get on to our next panel. That example concerns the operation of one group we made reference to before that was not chartered, the Eastport Group.

There is a chart over there to your left.[1] The purpose of that chart is to give some help to our witnesses and the audience here as to the names of the players who are involved in the contracts I will be talking about. There is no line of authority between SDIO and the ONR. We are not implying that the ISI is part of the SDIO. Those are relationships which we will be explaining. There are no lines of authority that are intended there, and that is why there are no lines in the chart.

Let me get to some of the facts here on what is called the ISI contracts.

Eastport, which was the committee we referred to, never chartered, but giving advice directly to the SDIO, has only eight members. Two of those members work for the ISI, which is part of the University of Southern California. Those two people are the chairmen of Eastport, Dr. Danny Cohen, and Dr. Mizell. There is a third Eastport member, Dr. Lau, who works for the Navy in the Office of Naval Research, or ONR.

Now, the ONR awarded a contract to the ISI. The contract was based on an unsolicited proposal which Dr. Cohen of ISI submitted to Dr. Lau of ONR to perform SDI research work related to the recommendations in an Eastport report, which had been released about 2 weeks earlier.

---

[1] See p. 163.

The ONR awarded the ISI a $5.3 million contract for three years to do that research. One year later, after consulting with the SDIO, the ONR ended that contract.

Do either of you know why there is no explanation in either the ONR or the SDIO files documenting that multimillion dollar decision? Would either of you happen to know that?

Mr. CARROLL. No, I do not, Senator. I did ask, at the request of the staff, and I do not know the reason why there is not a memorandum in the file on that.

Senator LEVIN. Now, Mr. Carroll, you said in your statement that the ONR reviewed the contract because an article criticized the award as improper due to Dr. Cohen's participation.

Then you say the ONR cancelled the contract because it was not really within the scope of the "Broad Agency Announcement."

Do you know why that proposal, which never mentioned Navy operations to begin with—the proposal from ISI to ONR—do you know why it was awarded under that "Broad Agency Announcement" in the first place?

Mr. CARROLL. As I understand it, Dr. Lau considered that the concepts for communicating among satellites for SDI would have relationship to a Navy fleet organization.

Senator LEVIN. Even though the proposal made no reference whatsoever to the Navy. Right?

Mr. CARROLL. That is correct, sir.

Senator LEVIN. And Dr. Lau, whom you are referring to, sits on the Eastport Group with Dr. Cohen of ISI. Right?

Mr. CARROLL. That is correct, sir.

Senator LEVIN. And it was an unsolicited proposal to ONR, right?

Mr. CARROLL. I think that, given that ONR was contracting for the SDI, an argument could be made that if they had not referenced the broad agency announcement, it could have been evaluated——

Senator LEVIN. It was not. It came in under the "Broad Agency Announcement," didn't it?

Mr. CARROLL. It was awarded under the broad agency announcement, yes.

Senator LEVIN. And it was unsolicited, wasn't it?

Mr. CARROLL. That is correct.

Senator LEVIN. Now, isn't there an appearance problem? Let me state this very carefully, because it goes to the heart of the matter.

Isn't there an appearance problem when the chairman of an advisory committee submits an unsolicited proposal on behalf of his employer to ONR; it is directed to the attention of a scientific officer at ONR who also serves on that advisory committee; and then the scientific officer helps get the contract approved under an ONR program that does not even cover the proposed research?

Isn't there an appearance problem?

Mr. CARROLL. Well, I have to go back to the process by which it was awarded. The people involved did not think of it as an advisory committee. They thought that it was a contract, and it had an organizational conflicts of interest provision, and it would not have reached the submission of a proposal for related research.

It was focusing in on the—did the members have any interest in the work they were reviewing?

Senator LEVIN. But weren't they paid a per diem by the United States Government for objective advice to us?

Mr. CARROLL. There was a contract price that reflected their daily work.

Senator LEVIN. Wasn't that $1,000 a day?

Mr. CARROLL. Well, the pricing was looked into——

Senator LEVIN. Were they paid a per diem?

Mr. CARROLL. I would have to answer that for the record, sir. I have not looked at it in a couple of years.

But it is my understanding they talked in terms of per diem, but the price was based on not only when they were meeting, but the work that they did away.

Senator LEVIN. Who paid the members of that Eastport Group?

Mr. CARROLL. That was furnished by the Air Force through the University of Maryland.

Senator LEVIN. That was taxpayer dollars, wasn't it?

Mr. CARROLL. Absolutely.

Senator LEVIN. They were advising the U.S. Government, weren't they? Do we pay people to advise anyone else other than us?

Mr. CARROLL. Well, we do not pay them directly.

Senator LEVIN. They were receiving Government funds to give advice, were they not, to the SDIO?

Mr. CARROLL. Well, it was set up as a contract between the Air Force's Office of Scientific Research and the University. That is what they were trying to do.

Senator LEVIN. I am talking about the Eastport Group. The Eastport Group recommended that certain research be done, and it was paid by the Government, wasn't it?

Mr. CARROLL. Yes, sir, it was.

Senator LEVIN. They made the recommendation, and then two members of that group took some action. One member, Dr. Cohen, on behalf of his employer, ISI, files the proposal with ONR, and Dr. Lau, the other member of the Eastport Group, recommends that proposal be funded. Those are the two things that happened.

My question to you is: Don't you see an appearance problem?

Mr. CARROLL. Well, the problem that I have is that I am not an expert in this field, but as I understand it, there are not too many people who do have the expertise in this networking of high speed computers.

Senator LEVIN. I understand that, but did Dr. Cohen, when he participated in the Eastport Group proceedings that led to the recommendation that that research be done, did he disqualify himself?

Mr. CARROLL. No, sir, he did not.

Senator LEVIN. How do you know that? How do you know that he did not disqualify himself, by the way?

Mr. CARROLL. Well, there was a contract provision that required the people who were doing the review of the research at that time to certify that they did not have any interest in the proposals.

That certification was not done, so I assume there was no disqualification.

Senator LEVIN. OK, so as far as you know, he did not disqualify himself. Then, a few weeks after that recommendation comes out, his employer, we are talking about ISI, files an unsolicited proposal—and I am repeating this—with ONR, not making any reference to the ONR program, and it is funded for $5 million, and the officer reviewing it for ONR is his colleague on Eastport.

Now, I am telling you, this is one of the reasons we have FACA—so that we can make a matter of public record exactly what the interests are of the people who are giving us advice.

Maybe you do not want to answer the question. I will answer my own question. There is an appearance problem to me. There is an appearance problem. I am very much troubled when that kind of thing happens.

Now, maybe there is no alternative. Maybe Dr. Cohen is the only person who can give advice to the Government. And maybe his firm, or his entity, ISI, is the only one who can do the recommended research. Maybe. I doubt very much that that is true, by the way, because of what I will get to in a moment.

But if that is true, at least it ought to be public. It ought to be out there on the record. There ought to be disclosure forms. There ought to be ethics laws that apply.

Instead, what we have here—because Eastport never was covered by FACA—is we have them circumventing the very laws which were intended to avoid conflicts of interest.

Mr. CARROLL. Again, the people who made the decision at the time acted, I believe, in good faith. They went from one research organization to another as to how advice from outside the Government could be obtained, and that was the process they followed.

Senator LEVIN. Do you know why the ISI did not go to the SDIO for funds? Why did they go to ONR, since the SDIO had its own program it could have awarded money under? Do you know why ISI went to ONR?

Mr. CARROLL. At that time the SDI was just starting its contract organization.

Senator LEVIN. Do you know whether SDIO had contracting authority at that time?

Mr. CARROLL. I believe we got it in October of 1985. I do not know how many people we had at that time. It took awhile for that office to make its presence known.

But even today we still would look to the services that have certain expertise to do the contracting for us.

Senator LEVIN. But not under their "Broad Agency Announcement" procedures, would you?

Mr. CARROLL. We have our own broad agency announcement.

Senator LEVIN. And the ISI proposal was submitted under a Broad Agency Announcement procedure, was it not?

Mr. CARROLL. Yes it was.

Senator LEVIN. OK. We are going to have to move on. Let me just get to one more contract. There was public outcry about the first contract. As I understand it, that contract was terminated or revised; is that correct?

Mr. CARROLL. Restructured, yes, sir.

Senator LEVIN. Restructured. Then the ONR issued a new Request For Proposals to continue that research. And as I understand

it, there were three companies who bid on that RFP and submitted proposals.

One was thrown out immediately as not being eligible. The ISI submitted a proposal for $6.3 million. There was another company called Sparta which submitted a proposal for $4 million. That is over $2 million less.

There was a three-person technical evaluation committee chaired by Dr. Lau. That is the same Dr. Lau. One evaluator, not Dr. Lau, praised Sparta's proposal, indicating it not only was responsive, but superior to ISI.

Yet the ONR contracting negotiator recommended that the contracting officer declare the Sparta proposal "non-responsive without any chance to receive this award." The director of ONR's contracts division decided that, "Based upon the technical evaluation report, and the negotiator's evaluation," only ISI was in the competitive range for the contract.

My question to you is, why was Sparta declared nonresponsive and not given even a chance to negotiate its own proposal? Do you know?

Mr. CARROLL. No. As I understand it—I do not know that it was the director of contracts, because as I understand it, when it got up to that level, they questioned the fact that there were no discussions, and they intend to follow that process.

Senator LEVIN. We received a letter from you on March 14th of this year which says—we are now talking about the second contract—that "the University of California has been selected for the award." Is that correct?

Mr. CARROLL. Well, it had been selected by the negotiating team. The award was still in review. That was my understanding that they had been selected for the award.

Senator LEVIN. What you are telling us today is that following the announcement of this hearing, that you are now going to review this entire matter?

Mr. CARROLL. Well, the Office of Naval Research, I believe, is, yes, sir.

Senator LEVIN. Are you going to supervise that in any way? This is SDIO money, isn't it?

Mr. CARROLL. That is correct. But I do not have a supervisory role to these agencies.

Senator LEVIN. We will ask the IG to do that. We will make part of the record the documents I have referred to so far, and we want to thank you all for coming.[1]

If you have any additional comments you want to make for the record, we would welcome them. The record will also be left open for Senator Glenn or any other member of the committee that might want to ask questions of you.

Again, we are grateful for your being here. Thank you.

The next witness will be Dr. David L. Parnas, who is a professor of computer and information sciences at Queens University in Ontario. Where in Ontario, may I ask?

Dr. PARNAS. Kingston, Ontario.

---

[1] See p. 164 for selected documents related to SDIO and DOD advisory committees.

Senator LEVIN. Kingston, thank you.

Professor Parnas, you could sit right in the middle there where that mike is, so we can all hear you. Professor, we are going to need you, like our other witnesses, to summarize your testimony for us.

The entire testimony will be made part of the record.

TESTIMONY OF DAVID L. PARNAS, Ph.D., PROFESSOR OF COMPUTER AND INFORMATION SCIENCES, QUEEN'S UNIVERSITY, ONTARIO, CANADA[1]

Dr. PARNAS. Thank you very much, Mr. Levin. I must say that I am very glad that you are holding these hearings, and I am privileged to be able to contribute in some way.

I want to tell you that I am a computer scientist, one who has spent about 14 years of his life in various ways advising the Government while holding academic positions. But I am not a lawyer. I am not somebody that has studied conflict of interest.

And everything that I tell you will be based on my personal experience, but you cannot generalize it, because I do not know how typical my experience is.

I was appointed—well, let me put it this way, I am not sure of the technical term—but in May of 1985 I received a phone call from Dr. Mizell, at that time an employee of ONR, who asked me quite literally if I wanted to save the world from nuclear conflagration, and then told me that he would pay me $1,000 a day to do it, and that they were forming an advisory panel called the SDIO panel on computing in support of battle management, and they wanted me to serve that summer 18 days.

At that point the word, Eastport Group, was never mentioned. That is the same panel, however, that later became known as the Eastport Group.

After that phone call, I had several phone calls with Dr. Lau and also some communication by electronic mail. I learned the names of the other panelists and the dates, and both people repeatedly confirmed $1,000 a day plus expenses on a per day basis.

Just shortly before the first meeting—I believe the letter was dated June 5, 1985, about 2 months after the phone call—I received a letter from James Offut, a naval officer assigned to SDIO, and an assistant director at SDIO, which confirmed my membership on the panel; called it an advisory panel; gave it a vague charter, which was to advise the Government on how to spend lots of money.

There was no detailed description of what we were supposed to do, and there was no confirmation in that letter of the amount of payment. So as of that date, the amount of payment was only an oral agreement between myself, Dr. Lau and Dr. Mizell.

During the 2-month period before the first meeting, I thought over the arrangement, and I personally became concerned about conflict of interest. This was never brought up by them, but I was also at that time a part-time employee of the Naval Research Lab, which is under the ONR. And I was also under contract to TRW, which you may know to be a major SDIO contractor.

---

[1] See p. 94 for Dr. Parnas' prepared statement.

And I called up Dr. Lau at one point and said, perhaps I cannot serve because I have a conflict of interest, because I have a project at NRL that could certainly benefit from funding from this source.

His response, which I think was very prophetic, was that he was not worried about that kind of conflict of interest. He said everybody on the panel has that kind of conflict of interest, and went on to tell me that if we did not have projects of interest to SDIO, why would they want me on the panel.

My questions about conflict of interest continued when I listened to the advisory panel, because it became clear that each of the other panelists was making proposals for SDIO funding of work that they were either presently involved in or wanted to do.

When my turn came, and I was asked to make a proposal, I refused, saying that I had not yet learned enough about SDIO to know what the Government needed in that area. And then I was told, well, that is OK, just talk about the work you are doing that got you here.

And it was clear to me that there was no separation in their mind between talking about what you wanted funding for and advising the Government.

Another thing that bothered me was during one lunch, one of the other panelists whom you have not mentioned here, who was a TRW employee, or actually, a subsidiary of TRW, told me that he was not taking the $1,000 a day, because his job for TRW was going to Washington and trying to get word of good contracts to bid for, and he did not want to be paid twice for the same job.

So although he was a member of the panel, he was at least honest enough not to take the $1,000 a day, but I wondered how he could handle the conflict of interest inherent in that role.

I was asked by the letter to talk about the finances. I should point out that we only had a spoken agreement on the $1,000 a day, and as you probably know, after the first meeting, several weeks after the first meeting, I resigned from the panel, and I did not get paid.

I started trying to find out what was going on. I did not particularly want the payment for $1,000 a day, because I thought it could be argued that since I resigned I did not deserve it. But I wanted my expenses back. And I was told that they were having trouble getting the contract put through, and that in fact, they had tried to put it through as a noncompetitive contract for the University of Maryland, and then they were forced by what they called green eye shade guys to make it a competitive procurement.

And as far as I can tell, the actual contract did not go through until the panel had completed most of its work.

I ultimately received payment from the University of Maryland, and that was the only communication I ever had from the University of Maryland. They did not participate in the selection, and they were not even mentioned in the beginning.

As I said in my written testimony, there was a detailed discussion in which they said they did not know how I was going to be paid, and it did not matter.

One thing that I think should be important: It has been assumed that this is an expert panel. As a computer scientist, I can say that none of the people on the panel were the people that, I believe,

85-796 0 - 88 - 2

should have been appointed to the panel. They were not any of the people I would have thought of. And none of them seemed to have expertise in the weapons systems area. And I was rather troubled by that.

It turns out that all of the people that I would have named are now known as SDI supporters in the computer science field. So I was not making any kind of political judgment, it was just that I felt that the panel members did not have the right expertise, and I was bothered that there was no review of the expertise of the panelists.

Senator LEVIN. No what?

Dr. PARNAS. No review by any authority of whether they were expert in the right things or not, and there was nothing on the record.

I asked Dr. Lau how he picked those people, and he told me, well, they are people I have worked with before; I know I can trust them. That was the only criteria he gave.

Another concern about the panel that bothered me was that I did not believe we were given the information necessary to give good technical advice.

We had very, excuse the word, "Mickey Mouse" briefings from two officers, not from technical people. There was no serious discussion of the ideas.

When I pointed out that we did not have adequate information, the organizers sort of ran around and tried to find somebody that could give us the right information, and could not find such a person.

I am also very concerned about this panel, as a computer scientist, because of the results it reported. There are two reports that I have seen, that are known as Eastport reports. The 1985 report is a very well known publicly distributed document, contains some very vague but strong criticism of the Phase I architectures; it essentially says, redo phase I; and start over.

Now if you read that carefully, you will see that if the panel was right, then the SDIO and all ten of the contractors in Phase I had to be incompetent, because the mistakes that the panel reported were so obvious and so elementary that you would not expect to see anybody doing something the way they described it.

Later on I served on an OTA panel, and as part of my advisory role to OTA I learned a little more about those ten contracts, and I believe that the Eastport Group's description of them was inaccurate, and the criticism of them was undeserved.

So if you take the other side, if the panel was wrong, then you wonder about the membership and their expertise.

One of the proposals in the Eastport report was something called the SDInet, which is a very vague proposal of a network to achieve three goals, the first one to serve as a proving grounds for communications in SDIO; the second one to connect the contractors; and the third to permit resource sharing.

Now, from my point of view as a computer scientist, none of those things made sense to me. First of all, it turns out you cannot use ground-to-ground communication as a proving ground for space-to-space protocols, because the conditions are very different.

Second, we already had a network that connected the contractors, known as the ARPAnet, of which Dr. Cohen was well aware because he is maintaining it.

And third, if you want to use something as a proving ground, you do not also give it to contractors to connect them, because they want reliable connections. You cannot use something as a proving ground and have reliable connections at the same time.

So the whole thing did not make any sense to me until I learned from a magazine that Dr. Cohen had gotten that contract. Other than that, the thing did not make any sense at all.

There is a second Eastport report which has not been very widely circulated—I only recently got to see it—issued in 1986. I think I can say without fear of contradiction that it is not a report. It is a collection of papers with three holes punched through them.

All that is in it is a set of vague working papers, and each one is prefaced with a statement that says, the Eastport panel neither agreed nor disagreed with what comes after.

They duplicate each other; they sometimes contradict each other. And they are obviously working drafts. There are two worth discussing in there—none were good. The best one described itself as vague mutterings on a hard problem, and the other one said it was a product of a few minutes of less than quality thought.

I think those self descriptions were accurate, and I saw no contribution to the government in that report.

The important thing to realize, I think, in the light of testimony I heard earlier today was that the first Eastport report did get a lot of publicity. Because, as a result of my resignation from the panel, there was a lot of attention paid to it.

And it is very difficult for me to believe that anybody in SDIO was not aware of Eastport and did not know what it was doing. I know that at one point I received very angry telephone calls from SDIO telling me that they were preparing a report for General Abramson, and that it had to be complete with every aspect of the Eastport Group in it.

So again, I just have trouble understanding what was meant when officials testify that they had not heard about it. It was in front page articles in the Washington Post, page 7 of the New York Times, and so forth.

I would like to just close, perhaps, because I have been so negative, with a couple of thoughts. I was a government employee, albeit only on a part-time basis, for 14 years. And it is very difficult under present conditions for organizations like SDIO to get good scientific advice through what I consider to be normal channels, proper channels, of civil service appointment, the way that I did most of my work.

As I have detailed in my report, proper procedures makes it very difficult to hire consultants, and the rates are very uncompetitive. I think that may be a slight excuse for the SDIO—and other organizations—to try to get payment sort of through the back door to consultants.

However, I believe that in this case it would have been easy for them to get better advice. I know that I offered to do the thing as a government employee, but Dr. Lau was not interested in that arrangement. He wanted to hire me directly in this way.

I think that is about all that I have to say.

Senator LEVIN. Thank you very much, Dr. Parnas. Again, your statement will be made part of the record.

In reading your written statement, if I understood it correctly, you indicated that DOD officials were responsible for establishing Eastport and selecting its members, not some contractor, is that correct?

Dr. PARNAS. That is correct. I dealt directly with ONR employees, and the contractor that finally paid us was never even mentioned in the initial discussions.

Senator LEVIN. So you had no connection with that contractor at all?

Dr. PARNAS. I received a check from them.

Senator LEVIN. Other than that?

Dr. PARNAS. Other than that, yes.

Senator LEVIN. And do you remember the name of that contractor?

Dr. PARNAS. University of Maryland. Actually, to be more precise, I taught at the University of Maryland many years back; but at the time I had no other connection.

Senator LEVIN. So it was the University itself, it was not a component thereof?

Dr. PARNAS. No, I got a check, it said University of Maryland on it.

Senator LEVIN. As far as you know, were they performing only a non-substantive administrative role?

Dr. PARNAS. That is what I was told. And that is all they did with me.

Senator LEVIN. Your written statement indicates that Eastport panelists were paid $1,000 a day instead of FACA's limit of about $250 a day. You apparently were paid at the approximately $250 a day as a Navy consultant; is that right?

Dr. PARNAS. That is correct.

Senator LEVIN. What reason was given to you for the higher rate of pay?

Dr. PARNAS. They just said that that is what they were paying, and did not I like it. And I must admit that I am human enough to like it.

Senator LEVIN. Do you believe the Eastport Group's members should file financial disclosure forms and comply with the DOD's directive on standards of conduct?

Dr. PARNAS. Yes, I do.

Senator LEVIN. You indicated that you were a consultant to the Navy, and you contrasted that experience with your experience as a member of the Eastport Group, indicating that the Navy, in your consultancy, displayed greater sensitivity to ethical matters. Is that fair?

Dr. PARNAS. That is quite true. I think NRL has been very careful about that throughout my contact with them.

Senator LEVIN. And why do you think that there was that difference? What explains it?

Dr. PARNAS. I do not know. I have great respect for many of the people at NRL, and maybe it is just a special case. I cannot generalize on that, sir.

Senator LEVIN. You also testified in your written testimony that the Eastport members "did not distinguish between their role as advisers to SDIO and their role as researchers seeking funding."

Do you think that the Eastport recommendations were aimed more at obtaining research money for panelists than providing technical advice to SDIO?

Dr. PARNAS. Well, not all of the panelists, as far as I know, got that money. But I am telling you that in reading the report, I kept noticing little sentences that struck me, that this is a bid for having more work for them in various forms.

They kept recommending, in both reports, in fact, that they be reappointed, and that the committee keep on being funded, and that kind of thing.

Senator LEVIN. You were critical of the recommendation to develop an SDInet. Do you believe that that is an example of a recommendation that is more sensitive to providing a panel member or members, possibly, with research money than with providing SDIO with vital technical advice?

Dr. PARNAS. Well, I have not seen all of the documents, or the detailed documents on the SDInet, but from what I have seen, it makes no technical sense, and the only motivation I could think of for it was in some sense, "one hand washes the other."

Senator LEVIN. Dr. Parnas, we want to thank you. You have come from Ontario, I understand, to testify. We appreciate it. There may be additional questions of you, also, that we would like you to answer for the record, although there is no legal obligation for you to do so. We would appreciate it in any event.

Thank you again.

Our next witnesses are from the General Accounting Office. Rosslyn Kleeman is the Senior Associate Director. I will let you, Ms. Kleeman, if you would, tell us who accompanies you.

TESTIMONY OF ROSSLYN KLEEMAN, SENIOR ASSOCIATE DIRECTOR, GENERAL ACCOUNTING OFFICE,[1] ACCOMPANIED BY GREG ZIOMBRA, ASSIGNMENT MANAGER, GENERAL GOVERNMENT DIVISION, AND LYNN GIBSON, SENIOR ATTORNEY, OFFICE OF GENERAL COUNSEL

Ms. KLEEMAN. Yes, I have Lynn Gibson, who is with our Office of General Counsel, and Greg Ziombra, who worked with us on this request.

Senator LEVIN. Ms. Kleeman, we have your statement. Would you summarize it?

Ms. KLEEMAN. I can summarize it very briefly, and I will do that.

We found in our review that the Department of Defense has implemented many recommendations that we and other organizations made, and we believe they are generally complying with the Act.

However, there are some key recommendations still not implemented that we believe should be implemented.

You asked first that we look at the issue of balance. We believe that the DOD advisory committees could use some guidance in this area.

---

[1] See p. 104 for Ms. Kleeman's prepared statement.

At a minimum, the guidance should indicate factors to be considered in selecting committee and panel members, and the guidance should also require the reasons for the selections be documented.

The DOD scientific advisory committees currently do not cite the specific reasons that they select individuals for panel assignments, and we believe that they should.

A second area you asked us to look at is screening for conflicts of interest. And the Department of Defense agreed with our previous recommendations, and we found that their procedures requiring reviews to be documented were generally followed when members were first selected for a committee.

However, prescribed procedures were not followed when the committee members were assigned to panels. Consequently, we could not tell that reviews were made of panelists' financial interests, in light of their new duties; or that any conflicts or potential conflicts were identified or resolved.

And as you mentioned earlier, we looked at DOD reviews, and in addition to the decreasing number of reviews, we found that DOD does not have a plan which the committees and panels—of the committees and panels which will be reviewed in the future.

We believe that DOD should regularly review the advisory committees' operations, and ensure that any deficiencies that are found are promptly reported, and corrective actions taken.

Finally, you expressed particular interest in the Navy's actions on our recommendations in our earlier report that its panel members be appointed as special government employees, rather than being considered by the Navy to be employees of a grantee.

And we reviewed a number of the Navy panel appointments, and found that all the members we reviewed were now appointed as special government employees.

That is a quick summary, and I would be glad to answer any questions that you have.

Senator LEVIN. Thank you very much. I believe your testimony is that the number of committee reviews being done each year by the DOD has declined, and that no written plan exists for ensuring that all 61 DOD committees are reviewed in a three-year period. Is that correct?

Ms. KLEEMAN. Yes, that is right, sir.

Senator LEVIN. Who conducts those reviews?

Mr. ZIOMBRA. The Deputy Assistant Secretary for Administration.

Senator LEVIN. Can you tell us anything about the quality of the reviews that are being done?

Mr. ZIOMBRA. We really did not do an evaluation of the quality of those reviews. We just looked to see how many reviews were conducted, and we looked to see what results came about from those reviews.

Senator LEVIN. Now, apparently, you looked at four DOD committees; is that correct?

Mr. ZIOMBRA. That is correct.

Senator LEVIN. You did not look at the Eastport Group, for instance; is that correct?

Mr. ZIOMBRA. No, we did not.

Senator LEVIN. Did you look at the SDIO?

Ms. KLEEMAN. No, we specifically followed up on the defense science boards and those related committees that we had looked at in our 1983 report.

Senator LEVIN. You have heard testimony today about the SDIO. Does that testimony match your experience with the Defense Science Board?

Ms. KLEEMAN. Not the current experience.

Senator LEVIN. So we know DOD can do better?

Ms. KLEEMAN. That is right.

Senator LEVIN. And the Defense Science Board is an example of where they do do better, I gather?

Ms. KLEEMAN. Yes, and we found some improvements, we were pleased to find, since our 1983 report. There are still some things that we think can be done better, though.

Senator LEVIN. These reviews that you have told us about—how long are those reviews, how many pages?

Mr. ZIOMBRA. They are normally just a one-page memo that is prepared for the record, showing the essential results of the review.

Ms. KLEEMAN. They do not contain any follow-up as to what happened after the review.

Senator LEVIN. Would you call them perfunctory reviews, or how would you describe them?

Ms. KLEEMAN. Well, I think they were called summaries of the total review.

Senator LEVIN. But you are not able to tell us anything about the quality of those reviews?

Mr. ZIOMBRA. No, we did not look at those reviews from that standpoint.

Senator LEVIN. Do you have any evidence that a hard look was taken? Or you just have no way of knowing?

Mr. ZIOMBRA. We have no way of knowing, really, as to how extensive a review was performed. We just know——.

Senator LEVIN. Do you have an impression?

Mr. ZIOMBRA [continuing]. The written record that was prepared as a result of those reviews.

Senator LEVIN. Do you have an impression of how extensive a review was carried out?

Mr. ZIOMBRA. Not really. As we point out in our testimony, we know that certain problems were discovered as a result of those reviews. And as we point out, it does not appear that corrective action was taken.

Senator LEVIN. Even where they discovered problems?

Ms. KLEEMAN. That is right.

Senator LEVIN. OK. Ms. Kleeman, you also, I understand, asked the DOD whether it had issued any mass mailings to DOD personnel to alert them to FACA's existence and requirements. What did you find?

Ms. KLEEMAN. I do not believe they did any mass mailings.

Mr. ZIOMBRA. That is correct. We found no evidence of any general mailings, or the fact that they conducted any seminars, or anything like that.

Senator LEVIN. We have heard testimony today that back in 1983 the GAO, the IG for the DOD, and the House Government Oper-

ations Committee all recommended that the Department of Defense document how it was achieving balance on its committees.

Now, in 1988, you are making the same recommendation. Are we in the same place on this issue as we were in 1983?

Ms. KLEEMAN. I think we are. There has not been any definitive guidance in this area.

Senator LEVIN. When you speak of documenting how balance is achieved, do you mean a document that describes the criteria that were used, and how all the factors were weighed to come up with the roster of persons finally chosen?

Is that what you mean by documenting?

Ms. KLEEMAN. Well, I think it has to have that. I think there has to be some flexibility. I am not just sure how you would define balance exactly.

I think the principle of balance is important, and we would like to see some more specific guidance on that.

Senator LEVIN. Would you be so kind as to give some thought to that issue, and to send to the DOD a recommendation on that?

Ms. KLEEMAN. All right, we will certainly try to do that.

Senator LEVIN. When you were examining the DOD's conflict of interest procedures, did you perform any substantive analysis of financial disclosure forms to see if the members had conflicts of interest that were or were not identified and dealt with by the DOD?

Ms. KLEEMAN. We did review each form, and we looked at some of the specifics.

Mr. ZIOMBRA. I would not term it a substantive review. We did not look at the forms and do our own assessment of whether or not an actual or potential conflict of interest existed.

We looked to see to what extent the senior scientific advisory committees reviewed these forms to identify conflicts of interest.

Senator LEVIN. Did you have something to add?

Ms. KLEEMAN. I was going to say, we did find some items missing in our review of the forms. They were not always complete. But also, the reviews were not documented for two of the boards that we looked at, for two panels on each of the Defense Science Board and the Air Force scientific advisory board.

There was insufficient documentation that reviews had been conducted of statements when board members were assigned to panels.

Senator LEVIN. Do they know about that now? Have they been sent copies of your review?

Mr. ZIOMBRA. We reviewed our findings with them, yes.

Ms. KLEEMAN. They were reviewed when they were on the Defense Science Board, but when they were assigned to panels, they were not further reviewed to see if there might be some problems with that particular panel.

Senator LEVIN. We may have additional questions for the record for you. And again, thanks for your patience. It has been a long wait this afternoon.

Ms. KLEEMAN. Thank you very much.

Senator LEVIN. Our final panelist is Paul Weiss, who is the Associate Administrator for Administration of the General Services Administration. I believe he is accompanied by James Dean, the Director of the Committee Management Secretariat of the GSA.

We also have with us F. Gary Davis, Chief Counsel of the Office of Government Ethics, who is accompanied by Don Campbell, who is the Deputy Director of the Office of Government Ethics.

So we have got GSA and OGE, the General Services Administration and Office of Government Ethics. You are our final panel. Thank you for your patience in waiting here. I think we will start with Mr. Weiss.

TESTIMONY OF PAUL T. WEISS, ASSOCIATE ADMINISTRATOR FOR ADMINISTRATION, GENERAL SERVICES ADMINISTRATION, ACCOMPANIED BY JAMES DEAN, DIRECTOR, COMMITTEE MANAGEMENT SECRETARIAT, GENERAL SERVICES ADMINISTRATION

Mr. WEISS. Mr. Chairman, with your permission, I will briefly summarize my comments, and ask that you accept for the record my prepared statement.[1]

Senator LEVIN. Thank you, we will.

Mr. WEISS. Very briefly, you asked or Chairman Glenn asked, that we respond to five questions concerning our role in administering FACA.

One has to do with management controls, and how we insure, through our own process, and through other means, that the Act is effectively administered.

I essentially rely on four general areas. One would be Congressional oversight by the various committees over their respective departments and agencies.

We also rely very heavily on the departmental and agency management through their advisory committee management officers for information related to management controls.

We also receive our management information through the consultation process with each agency, as the advisory committees are chartered and rechartered. And of course we also rely on the open meeting aspect of the Federal Advisory Committee Act, and through dialogue with the designated Federal officers.

In terms of how we collect our information through the process, we collect a great deal through the consultation process with the agencies. We also, through our annual comprehensive review, are able to gather a great deal of data relative to the Federal advisory committees.

And we also maintain very detailed records with respect to each of the advisory committees chartered under the Act.

We also have ongoing continuous dialogue with the committee management officers on virtually a daily basis. We rely heavily on the Federal Register, the Congressional Record and the media for information related to advisory committees.

And we also have recently formed an interagency committee on Federal advisory committee management which held its first meeting back in March, and is representative of all the agencies with Federal advisory committees.

And looking to the future, we have scheduled a conference of people involved, both officially and unofficially with the Federal

---

[1] See p. 135.

advisory committee act. That conference is scheduled for May 12th and 13th of this year, and we expect to gather a lot of information and share our views.

With respect to actions we would take if we learned of advisory committees formed outside the provisions of FACA, basically, it is a three-step process that we would engage in.

First of all, we would contact the committee management officer in the affected agency and attempt to resolve the issue at that level.

Barring success at that level, and agreement, we would then raise it to possibly the Assistant Secretary for Administration or other equal official who has jurisdiction over FACA within that agency, the general counsel, or even the head of the agency.

If we did not reach success and agreement at that level, we would then engage in discussions with the Department of Justice as to whether or not that particular committee would be covered by the Act.

You also asked, Mr. Chairman, for us to address specifically the status of advisory committees created in connection with the performance of Federal contracts, and whether or not they are covered by the Federal Advisory Committee Act.

There is an extremely limited amount of case law in this area. However, given the way your question is posed, that is, if a contractor provides only administrative support to an advisory committee, and other features of the committee are undistinguishable from groups subject to FACA, that is, the group provides advice directly to a Federal official, and other criteria are met, then it seems to us, to GSA, that the committee would be and should be covered.

From our understanding of the issues involved, the test for inclusion under the Act is that the agency's contract requires that the advice of a group of other than contractor personnel be provided to the agency, and that the contractor has not merely solicited advice as part of the activities incidental to the performance of the contract.

Finally, Mr. Chairman, you inquired as to GSA's role in determining the standards of conduct applicable to advisory committee members, and our thoughts regarding any additional legislative authority which may be necessary to enhance the Secretariat's ability to enforce compliance with FACA.

GSA has taken steps to remain cognizant of the requirements of conflict of interest statutes, vis-a-vis members of advisory committees, and where appropriate, to notify agencies of changes in this area.

GSA also intends to maintain a close working relationship with the Office of Government Ethics. As part of this commitment, GSA has initiated discussions at the staff level to develop the means to improve the Federal community's understanding of the application of ethics statutes to advisory committee members.

We are exploring several options, including reference of ethics requirements in OGE regulations to our own rules governing Federal advisory committee management.

In addition, GSA will devote a substantial portion of its training course on FACA which is currently under development to ethics issues. We believe these efforts will permit greater awareness of

the issues involved at the appropriate levels within organizations sponsoring advisory committees.

GSA does not believe it is necessary to pursue legislation which would provide a direct role for the Secretariat in matters related to conflict of interest.

With regard to other legislative options to improve GSA's ability to detect committees which should come under FACA, it is our belief that the Secretariat's current authorities are sufficient for this purpose.

In our opinion, initiatives undertaken with the Federal community during the past year, combined with those suggestions offered to the Senate Committee on Governmental Affairs, at its initial hearing on FACA, should they be enacted, will result in a stronger, more effective oversight process.

Mr. Chairman, this concludes my summary remarks.

Senator LEVIN. Thank you very much, Mr. Weiss.

Let's hear from OGE now, and then we will ask questions of both of you.

Mr. Davis?

TESTIMONY OF F. GARY DAVIS, CHIEF COUNSEL, OFFICE OF GOVERNMENT ETHICS, ACCOMPANIED BY DONALD CAMPBELL, DEPUTY DIRECTOR

Mr. DAVIS. Thank you, Senator.

I would ask for the record, Senator, that Director Nebeker's statement, which responds to your March 25th questions, be made a part of the record.[1]

Senator LEVIN. It will be, in full.

Mr. DAVIS. I do not have any summary of the testimony, but I would like to point out, Senator, that there are standards that are already in existence for advisory committee members who are employees or special government employees.

I have an observation. I think that as I heard what was going on here with the testimony this afternoon, I think that advisory committees can be used by the Government to provide advice and recommendations, and they can also be used to seek the views of industry or business.

In the case of the former, members should be subject to the conflicts of interest statutes, while carrying on these Federal functions, in order to protect the Government's decision-making processes.

And one of the main purposes of the change in the 1962 criminal conflicts of interest legislation was to facilitate the recruitment of experts for part-time assistance without relaxing basic standards or permitting actual conflicts of interest.

That is why we created the status of a special government employee.

On the other hand, I think it is important on occasion to seek the views from business or industry, and to be evaluated by an agency in formulating government action. And subjecting members

[1] See p. 151.

to these types of advisory committees to conflict statutes might defeat the purpose.

So I think while there is a legitimate role for both kinds of advice and information, what is important is that to start with we understand what type of advice we are getting.

Senator LEVIN. Thank you.

First, Mr. Weiss, let me ask you about the action that the GSA takes relative to detecting advisory committees that should be chartered under FACA but are not.

-You testified that when you learn of a possible situation, that you take certain steps. Do you make any initiative to find out or is it mainly if you hear about something, that something is triggered?

Mr. WEISS. Mr. Chairman, given our limited resources, we rely very heavily on the consultation process with our agency counterparts.

We also watch the media, needless to say. If we learn of a committee rendering advice to an agency, and it is not in our records as a chartered committee, we would certainly engage in discussions with the agency where that committee is operating.

That together with following the Congressional Record and the oversight committees in their various processes, we do learn to the extent we can about these types of activities.

But I must also say that to our knowledge there has been very little of it that has occurred, at least in my tenure, over the past 3 years.

Senator LEVIN. Our investigation turned up the following relative to SDIO: one chartered advisory committee—and I will get into that in a moment—and five unchartered committees on kinetic energy, lethality, national test bed, sensor steering group, and Eastport.

It is a pretty disturbing ratio to those of us who are responsible for overseeing FACA, for those of us who care about conflicts of interest and ethics law.

I am just wondering whether that ratio is possibly being duplicated at other agencies. Do you have any way of knowing whether or not that ratio is different?

Mr. WEISS. We have no specific way of knowing, Senator, but I would certainly hope that that is not the case.

Senator LEVIN. Would you be surprised if it is?

Mr. WEISS. Yes, I would be very much surprised.

Senator LEVIN. So if there is a 5-to-1 ratio of unchartered to chartered in SDIO, you believe that that would be unusual?

Mr. WEISS. I believe that that is an anomaly, and very, very rare, if it occurs anywhere else at all.

Senator LEVIN. But the only way that you would know whether that is an anomaly would be if you took some initiative, if you had the staff to initiate investigations. You do not have that size staff, I gather.

In other words, you feel it is an anomaly, you hope it is an anomaly, you think it is an anomaly, but the only way you could really be confident that it is, I gather, is if you could make some kind of a study, agency by agency, to see if that fact is true. Is that a fair statement?

Mr. WEISS. You are correct. The only way to really ascertain definitely is to go out and do a complete audit.

Senator LEVIN. You said you take certain steps when you are informed that there may be an unchartered advisory group. Did you take any steps relative to SDIO?

Mr. WEISS. In learning about these committees?

Senator LEVIN. Yes.

Mr. WEISS. I believe there were staff discussions.

Mr. DEAN. When we learned of the problems with these committees, we discussed—we have in fact talked to the Department of Defense committee management officers about them. We do share the opinion that Eastport, for example, should have been a chartered advisory committee.

Senator LEVIN. Did you share that opinion with the Department of Defense?

Mr. DEAN. Yes, I did, sir.

Senator LEVIN. When was that?

Mr. DEAN. I talked yesterday in more detail with Mr. Ehlers, who was here earlier.

Senator LEVIN. So this was recent?

Mr. DEAN. It was. We also met with Mr. Carroll last week, and went over the circumstances. As you can gather from the testimony there was a whole confluence of oftentimes very confusing events which led to the emergence of these groups.

What we are concerned about, however, at the broadest possible level, is a fundamental breakdown in management controls, not only with FACA but with the various other laws that play into the operation of advisory committees, including for example ethics considerations, procurement considerations, and so forth.

And that is, for example, one of the reasons that in our recent work with the President's Council on Management Improvement—and I believe you have a copy of their report—we talk about the need for agencies to assess the requirement for evaluating their committee management programs on a department-wide basis under the requirements of OMB Circular A-123, which I think you are probably familiar with.

A 123 would ensure that a structure, a defined structure, is in place within those departments, that requirements are being communicated, and in fact that there are mechanisms in place to catch these kinds of situations.

Clearly, you cannot be everywhere all the time, and you have to balance the need for control with the end product. However, we think at a minimum, especially in a Department like DOD, where we have a fairly sizable number of advisory committees dealing with complex issues, reacting in real time to issues of national concern, that you ought to look at it from a department-wide basis, and document those results, and identify any possible control problems, and resolve those.

I think you also want to make sure that other players, for example, the management team and the Inspector General, as appropriate, make ongoing reviews of the programs, so that you do as much as you can without becoming overly oppressive and producing negative byproducts.

Senator LEVIN. The first time that you met with the DOD or the SDIO about Eastport, then, was within the last few weeks?

Mr. DEAN. Yes, that is correct. I initially learned about Eastport and some of the SDIO problems from your staff, quite frankly. We mentioned that we try to review the literature and so forth and try to catch things, but again, you cannot read everything.

We were very concerned when we heard about it, and we talked to the DOD staff just to request information. At the time they were preparing for this hearing and responding to some of your correspondence.

So it really was not until recently that we received anything in writing on Eastport or Test Bed or the other two panels that were mentioned this afternoon.

Senator LEVIN. When you told them that you thought Eastport was in violation of FACA, what was their response?

Mr. DEAN. They agreed. The committee management staff agrees.

Senator LEVIN. Which committee——

Mr. DEAN. Mr. Ehlers on "Doc" Cooke's staff.

Senator LEVIN. Mr. Cooke today was saying they are looking at it.

Mr. DEAN. Well, they are trying to finalize assembling all the information on Eastport.

Senator LEVIN. But his staff at least tentatively agreed with us?

Mr. DEAN. That is correct. On a staff to staff basis, from what we see, we agree that it should have been covered. And I think that Mr. Ehlers, Mr. Cooke's staff, also grasp the broader management control implications of all this, and one of the things that they are doing, which you may be aware of, is to develop a unified, integrated, DOD directive on Federal advisory committee management which takes into account some of these other considerations on ethics and so forth.

Quite frankly that is where we would like to see a lot of the agencies go, especially as the control environments get more and more complex, is to pull together these requirements to document them, to transmit them out.

And GSA is prepared to do whatever we can to fill in the cracks.

Senator LEVIN. Are you going to issue a detailed statement on the question of FACA chartering to all agencies now? Or what is your plan?

Mr. WEISS. We just issued a final rule on FACA in December of last year, and we are working together with your Committee staff on fine-tuning some language having to do with balance.

But by and large, I believe the rule does cover all these considerations we have talked about today.

Senator LEVIN. You are working on a statement relative to balance now?

Mr. WEISS. Yes, we are, which we have shared with your Committee staff, and we are expecting responses momentarily

Senator LEVIN. Would you also take a look at how the SDIAC is functioning, and tell me, just from what you see up there on the chart, whether or not that one chartered group is in compliance with FACA?

Mr. WEISS. Well, the simple and direct answer is, no, it would not be.

Senator LEVIN. Would you take on the responsibility of getting back with this Committee as to what actions the SDIO is taking to correct that situation? I think you have the oversight authority if something is brought to your attention. So will you let us know from your perspective whether they are correcting that problem?

Mr. WEISS. Certainly.

Senator LEVIN. Just a few questions for the OGE. Were you here earlier when we went through this whole matter involving Eastport, ISI, and ONR?

Mr. DAVIS. Yes, Senator, I was.

Senator LEVIN. Were you troubled by what you heard?

Mr. DAVIS. I certainly was, Senator. I was trying to determine——

Senator LEVIN. Were you able to follow the interrelationships here?

Mr. DAVIS. I was trying, to go back to your opening statement, it seemed to me that they were performing, this Eastport Group was performing a Federal function, or it seemed at least in those discussions. And if that were the case, if they were Government employees, let me put it this way, hypothetically, if they were Government employees, I was troubled from both a criminal and a standards of conduct standpoint.

It would seem that if you had Government employees performing the same sort of activities, you could have a variety of violations involved. You had personal financial interest. They would be taking official acts on particular matters which might redound to their own personal financial interest. You have a specific violation of the Executive Order dealing with proscriptions on activities of special Government employees.

Senator LEVIN. The only reason that they are not Government employees, I gather, is, the committee was not chartered, is that correct?

Mr. DAVIS. I do not know, the more I sit and listen. To go back to your opening statement, it is almost, if you walk like a duck and quack like one, you are one.

And it seems to me that a lot of the things that they were doing, particularly if the Government was engaged in the appointment process—I do not know if I am clear on that, but if the contracting officer had some role in bypassing the University of Maryland and picking out who his members were.

I am not sure that that is the case, but at least that is one point that came up.

Senator LEVIN. Since this obviously is a sensitive subject and should be done thoroughly, would you take a look at the facts here? We will work with you, and then you could give us an assessment as to whether or not these folks were, by some theory, Government employees, even though there was no charter?

Mr. DAVIS. Certainly, I would be happy to work with your staff.

Senator LEVIN. What has been troubling us, frankly, and it is I hope clear after three hours, is that by circumventing FACA, we believe they have in effect immunized themselves against some very important ethical rules.

What you are saying is, they may not have immunized themselves totally—at least you want to look at it. I think that would be very helpful, but we do not want to reach any conclusion obviously on that in this setting.

That is something that deserves a lot of personal attention on the part of people before they reach any conclusion as to whether or not the Eastport members were government employees and, if so, whether there were any violations.

So we would ask you to report back to us on that.

Mr. DAVIS. I would be happy to, Senator.

Senator LEVIN. Thank you.

You testified that some committee members are industry representatives, and as industry representatives, they do not have to comply with Federal conflicts law. I believe that was your testimony, Mr. Davis?

Mr. DAVIS. That is correct.

Senator LEVIN. None of the SDI Advisory Committee members served as industry representatives. They were all chosen for their individual expertise.

Given that, were all of these persons then subject to Federal conflicts rules?

Mr. DAVIS. I am not sure, from just what I heard here today, that that would be the case. But I would say this, that if they were—if they pass the test of Government employees, it would seem to me—I mean, performing Federal functions, the appointment, the supervision, some of the tests that are applied, I do not see how you could be representatives of industry.

Therefore, it would follow that if they were performing these functions, they would be subject to broad range of standards, conduct, criminal proscriptions, and so on.

Senator LEVIN. Well, we want to thank you all again. We asked you to do some things for us. There may be some additional requests by other members of the Committee, or indeed by me.

You have been very patient waiting this long. Your testimony has been exceedingly helpful, and we are grateful for it.

Just one additional question of you, Mr. Weiss. Your written statement indicates that the GSA believes that conflicts of interest rules for advisory committee members lie within the province of OGE?

Mr. WEISS. That is correct.

Senator LEVIN. You say that you are considering cross-referencing ethics requirements in your FACA reg. And we would urge you to do that.

Mr. WEISS. We would certainly be happy to.

Senator LEVIN. We will stand adjourned.

[Whereupon, at 4:45 p.m. the Committee adjourned subject to the call of the Chair.]

APPENDIX

Statement of D. O. Cooke

Before the Senate Governmental Affairs Committee

Hearings on the Federal Advisory Committee Act, April 19, 1988

Mr. Chairman and distinguished members of the committee, I am pleased to have the opportunity to speak to you today regarding the Department of Defense committee management program . . . Specifically, how we manage the Federal Advisory Committee Act within the Department of Defense.

Within the Department of Defense, our use of advisory committees has enabled us to obtain sound advice from a wide variety of experts covering most of the functional areas throughout the Department. Because of their contributions, the management of DoD programs has been strengthened considerably.

The cost of obtaining these valuable services has been minimal if one considers what it would cost to employ these professionals at the going rate in private industry. Its is also important to note that only one third of our non-Federal committee members receive compensation. It is clear that we are receiving the services of high caliber experts at bargain prices.

Nevertheless, we try to keep the number of DoD advisory committees at an absolute minimum. Before a committee is established, a sponsoring official must take a hard look at the need for the committee. Normally, a sponsoring official is the Secretary of Defense, the Secretary of a Military Department, the Chairman of the Joint Chiefs of Staff, an Under Secretary, an Assistant Secretary, or the head of a Defense Agency. The sponsor also determines whether the committee's objectives can be accomplished with existing resources and what benefits are expected to accrue. At the present time, there are only 61 DoD advisory committees. We believe that this relatively low number, when compared to the size of the Department, reflects that only those committees considered to be essential to mission accomplishment are established.

The DoD advisory committee program is managed under the basic principle of centralized policy guidance and oversight and decentralized execution of operations. The DoD Committee Management Officer, who reports directly to me, is responsible for developing policy, issuing guidance, coordinating Department-wide issues, preparing reports, maintaining records, and monitoring operations. Each DoD organization having an advisory committee has a committee management officer who reports to the head of that organization, or his designee. These individuals are responsible for managing and coordinating the activities of the committees under their cognizance. Each committee has an executive secretary or coordinator who is responsible for managing day-to-day operations. This arrangement, which is reflected in more detail on a chart which was provided to you earlier, works well. We believe it gives us maximum efficiency at minimal cost.

DoD Directive 5105.18, titled "DoD Committee Management Program," provides the overall policy guidance for the committee

management program. The Military Departments and other DoD components have issued implementing instructions and regulations to amplify the requirements and adapt them to their own needs. In addition, we have issued guidance on specific aspects of the program in the form of policy memoranda, as necessary. For example, we outlined our program of advisory committee reviews to DoD Components in a memorandum in January 1984. Similarly, we announced our policy on hiring non-Federal members in August 1979. This arrangement works, in large part, because we keep in close touch with committee management officers and sponsors throughout the Office of the Secretary of Defense, Military Departments, Organization of the Joint Chiefs of Staff, and Defense Agencies.

This close association is reflected by the manner in which we establish an advisory committee. When a sponsoring official believes that an advisory committee is needed, he or his representative meets with the organization's committee management officer, who in turn reviews the requirement and consults with the DoD Committee Management Officer. The proposed establishment is then discussed in detail and an assessment of the validity of the requirement is made. If the proposed committee appears to have merit, and has been thoroughly screened to ensure that the functions can not be performed in-house, the requirements of the Federal Advisory Committee Act are addressed, emphasizing the importance of balanced membership, appointment procedures, financial disclosure statements, the need to file Federal Register notices, and other salient points of the program. Copies of DoD Directive 5105.18, the Federal Advisory Committee Act, the GSA Final Rule, and a procedural guide are provided for the prospective sponsor so he can move ahead to formally request establishment.

We also work closely with the General Services Administration Committee Management Secretariat. After determining that a new committee is required, we send the final version of the proposed charter, along with rationale for forming the committee, including a balanced membership plan and cost estimate, to the Secretariat. The Secretariat staff has been exceptionally responsive, and on those occasions where we have differed, we have been able to negotiate a mutually agreeable solution. We are also represented on the Interagency Committee on Advisory Committees, which is headed by the Secretariat. In addition, we renew our charters every two years, with GSA consultation, and do an annual review of our entire program, providing GSA with membership lists, program costs, and other operational data. So we work closely with the Secretariat on a continuing basis and believe the relationship serves us both well.

As in the case with any wide-spread program, problems regarding the administration of DoD advisory committees sometimes surface. When they do, we address them promptly. In 1983, the DoD Inspector General prepared a report on the Defense Science Board and the General Accounting Office prepared a report on other scientific advisory committees. Deficiencies were cited regarding members appointments, inadequate filing of financial disclosure statements, and internal operating procedures. As a result, we established a review program in

January 1984 to ensure that advisory committees are reviewed on a regular basis for compliance with the Federal Advisory Committee Act and DoD policies and procedures. During the first year we mounted an intensive effort and completed twenty-five reviews. Since then, the reviews have continued, consistent with time and staffing constraints and we completed thirty-one more through 1987. Throughout the process, we have tried to concentrate on potential problem areas. Thus, for example, we have reviewed the Defense Science Board and a number of its subpanels annually, along with several other of the scientific advisory committees.

In addition to the reviews, we have tightened the program in other areas. DoD Directive 5105.18, was revised to ensure that our policies are consistent with the GSA Rule and the Federal Advisory Committee Act. We have also monitored the annual report submissions more closely to check for inconsistencies in costs and other operational data. We screen charter renewals to be sure that the committees are justified and fully documented. Finally, we plan to consolidate all of the statutory and policy guidance on advisory committees into a single DoD Directive.

An important aspect of our program that has caused some concern to your committee, as well as the Department of Defense, has to do with the appointment of advisory committee members. Let me emphasize that all committees that meet the criteria of the Federal Advisory Committee Act are chartered, managed, and monitored under the provisions of the Act and in accordance with DoD policies and procedures. Advisory committee members are covered by the requirements of DoD Directive 5500.7, "Standards of Conduct." Before being employed, they are subjected to a screening process. First, they must file a completed DD Form 1555, "Confidential Statement of Affiliations and Financial Interests." Second, those that will be exposed to classified material must undergo a security investigation. And third, they must be approved by the Assistant to the Secretary and Deputy Secretary of Defense.

With respect to establishing committees under contracts, committees that we establish, which meet the criteria of the Federal Advisory Committee Act, are constituted under the provisions of the Act, with individuals formally appointed as members. We do not knowingly authorize, nor is it Department of Defense policy to condone, the formation of Federal advisory committees with contractors or with any other third party. If such arrangements come to our attention, we immediately confront the sponsors involved and initiate action to cancel them. However, we do not have cognizance over committees established by DoD contractors for their own purposes. In these instances, committee members are contractor employees, receiving guidance and supervision from their employer, who is the contractor.

You expressed an interest in the degree to which the Strategic Defense Initiative Organization has complied with the provisions of the Federal Advisory Committee Act. Our records indicate that the SDIO has one advisory committee, which was established in January 1985 in accordance with the same policies and procedures as every other Department of Defense advisory committee. We consulted with the SDIO representatives who proposed to establish the committee, reviewed their

justification, membership balance, draft charter, and so on; then went through the consultation process with GSA. We worked closely with the SDIO staff on appointment of members, filing of proper Federal Register notices, and the other administrative requirements that go into the management of advisory committees. In September of last year, we reviewed the SDI advisory committee records and operating procedures as part of our review program. We found no irregularities and stressed that they should continue to follow the requirements of the Act. Should you have specific questions on the day-to-day operations of the SDI committee, Mr. William Carroll, the SDI General Counsel is here to speak for that organization.

This completes my presentation. I will be happy to answer any questions.

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE

WASHINGTON, DC 20301-1100

COMPTROLLER
(Administration)

09 MAY 1988

Senator John Glenn
Chairman
Committee on Governmental Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

This responds to your letter of April 25, 1988, in which you requested that we provide answers to a number of follow-on questions relating to the April 19 hearing that was conducted by your Committee. The questions and answers are:

Q: Do you think you could provide more detailed guidance on the balanced membership requirement to officials within the Department and its components?

A: "Balance membership" has not been clearly defined in the Federal Advisory Committee Act or the GSA Final Rule. In fact, in testimony at the April 19 hearing, the GAO witness stated "We recognize the difficulty in defining the term balance as envisioned in the act and determining whether in a given case balance has been achieved." Within the DoD, each committee tries to achieve "balanced membership" under different criteria, depending on the nature of the subject matter involved and the expertise required. Membership qualifications may involve such considerations as substantive knowledge, organizational representation, minority status, geographic location, etc. By applying the "balanced membership" criteria on a case-by-case basis, we believe that the objective of balanced advice is best served. "Balanced membership" has been the subject of considerable discussion within the DoD and in our dealings with the GSA Committee Management Secretariat. The DoD would welcome a clearer definition and improved guidance with respect to "balanced membership" criteria.

Q: Have you taken action to prevent DoD Components from forming advisory committees through contractors or other third parties?

A: As I indicated on April 19th, the DoD makes a conscientious effort to ensure compliance with the Federal Advisory Committee Act. This includes the prohibition of committee establishments through improper means and aggressive action to ensure that

existing committees follow the provisions of the Act. Much of this is accomplished by personal contacts and telephone conversations. At times, it is necessary to prepare memoranda to key Defense officials when irregularities are noted. Three examples are attached.

Q: DoD's new Standards of Conduct do not address who is responsible for enforcing the agreement to disqualify. How does DoD ensure that members do recuse themselves?

A: Most conflict of interest problems on advisory committees are avoided by careful review of the potential for such problems during the selection process. Under ideal circumstances, individuals with the requisite knowledge and skills, and no potential for conflict, should be selected. As you noted, if there is a potential conflict, disqualification is one way of dealing with it.

DoD staff members who support advisory committees, and who attend their meetings, are aware of the disqualifications implications, and should raise this issue if a member at a meeting engages in a discussion that conflicts with a commitment to disqualify him or herself. Committee members have also been known to raise the issue. Nevertheless, it must be conceded that only limited enforcement actions are practical. It would be impossible to monitor conversations or correspondence between committee members outside of the meetings. Government knowledge of changes in members' investment portfolios or other interests can only come from the members. Persons of doubtful integrity should not be appointed. On this law, as on most standards of conduct, the main responsibility for compliance rests with the individual, a point that is stressed in orientations of members. New committee members are reminded that they are "special Government employees" and that they are subject to a variety of laws, including 18 U.S.C. Section 208. This law's penalties for violation, a $10,000 fine and up to two years in prison, should have a deterrent effect on any member tempted to ignore a recusal.

Q: Does FACA apply to a study group organized pursuant to DoD Directive 4205.2?

A: When applicable, every study group organized in the DoD must comply with FACA. Section D(3)(i) of 4205.2 is intended to facilitate the use of private citizens in carrying out Government programs. When such participation involves an advisory group meeting the FACA criteria, the sponsoring organization must establish the group under FACA.

Q: Should DoD components be advised to ensure that FACA is not violated when a study group is created pursuant to DoDD 4205.2 and could the directive clarify this requirement?

A: The proponent of DoDD 4205.2 has advised that he intends to update and reissue the directive. At that time Section D(3)(i) will be clarified to ensure compliance with FACA. In the interim,

we plan to issue a memorandum to the effect that DoDD 4205.2 may not be used to circumvent FACA.

Q: Is OMB Circular A-63 still in effect?

A: No. It was superseded by the GSA Interim Rule and, subsequently, by the GSA Final Rule.

Q: Will you be amending the "Memorandum For The Record" to include the complete language of the Act regarding "balanced membership"?

A: Yes, the Memorandum will be amended. In addition, the guidance contained in the directive on advisory committee management, which we plan to develop and issue, will contain the same language.

Q: Will you be providing more detailed guidance on the "balanced membership" requirement to DoD officials?

A: "Balanced membership" is addressed in our answer to the first question.

We hope this response provides you with the information you require.

Sincerely,

D. O. Cooke
Deputy Assistant Secretary of Defense

Enclosures

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE

WASHINGTON D.C. 20301

1986

COMPTROLLER
(Administration)

MEMORANDUM FOR THE ASSISTANT SECRETARY OF DEFENSE (PUBLIC AFFAIRS)

SUBJECT: The Defense Information School Board of Visitors

The Defense Information School established the subject advisory committee in 1980 without being aware of either the applicable legislation (P.L. 92-463, "Federal Advisory Committee Act") or the appropriate DoD and Army regulations (DoD Directive 5105.18 and AR-15). In 1985, after the existence of this committee came to their attention, the Headquarters, U.S. Army Training and Doctrine Command advised the Defense Information School to discontinue the committee. We have now received a request from the Defense Information School, forwarded through the Department of the Army, to formally establish the Defense Information School Board of Visitors as a Federal Advisory Committee.

Since your staff provides policy guidance to the Defense Information School, your review and concurrence is necessary before we begin the lengthy process of establishing this committee as a Federal Advisory Committee. As part of your review, you should be aware that, normally Federal Advisory Committees within the DoD report to high level officials, general officer or flag rank if military, and assistant secretary or higher if civilian. The proposed committee would report to the Commandant, Defense Information School who is below that level. Further, while it is "nice to have" an advisory committee in many situations, current Administration policy is to limit Federal Advisory Committees to those that are absolutely essential. The justification provided by the Defense Information School does not indicate that this committee falls into the "essential" category. For these reasons, we are not convinced that establishment of the committee is in the best interests of the Department.

If this committee were to be established, certain changes to the proposed membership plan would be necessary. Their proposal indicates that the committee would have 15 members, some of whom would serve six-year terms. DoD Federal Advisory Committees which provide input to educational institutions generally have only six to ten members. The proposed committee size (15) would be unwieldy. Further, all DoD advisory committee members are appointed to two-year terms. This policy does not preclude reappointing a member to a second term.

For your consideration and review, we have attached copies of the correspondence received from the Defense Information School and the Army on this subject. I would appreciate it if you would provide me with your comments. My point of contact to discuss this matter further is Mr. John Wilson, extension 54281.

D. O. Cooke

D. O. Cooke
Deputy Assistant Secretary of Defense

Attachment

Copy to: Mr. J.B. Hudson, OSA

Prep'd by OMP-OASD(C)/3A326/x54281
A/O: Typist
DATE: 19 FEB 1986

DEPARTMENT OF THE ARMY
ADMINISTRATIVE ASSISTANT TO THE SECRETARY
WASHINGTON, D.C. 20310-0105

10 February 1986

MEMORANDUM FOR DEPUTY ASSISTANT SECRETARY OF DEFENSE (ADMINISTRATION)

SUBJECT: Request to Establish a Federal Advisory Committee

The Defense Information School (DINFOS) trains Army, Navy, Air Force, Marine Corps, Coast Guard personnel, and federal Government civilians in the theory, methods, and techniques for keeping the American public properly and quickly informed about the activities of the Armed Forces. To meet this mission, the staff and faculty must stay abreast of the fast changing developments in the mass communications field.

In 1979, at the direction and verbal authorization of the Assistant Secretary of Defense (Public Affairs), DINFOS established a Civilian Board of Visitors to serve in an advisory capacity to assist in fulfilling its mission. The board is an external source of expertise which:

- Promotes excellence in public affairs training;

- Acts as an important bridge with civilian professional communities; and

- Ensures continued reflection on the school's objectives, operations, and policies.

Since the board's inception, invaluable advice and assistance have been received enabling DINFOS to provide quality training. To discontinue the services provided by this board would have a detrimental impact on the school's ability to meet its mission. Therefore, DINFOS is requesting authorization to officially establish and operate this board under the provisions of PL 92-463, the Federal Advisory Committee Act. Required documentation to officially establish this advisory committee is attached.

We support this Administration's initiatives to limit the number of federal advisory committees and to continue only essential committees. However, we

believe that the DINFOS Board of Visitors provides essential services which should be continued. Since DINFOS is a DOD activity for which Army serves as Executive Agent, we are forwarding their request for your review and final approval. The Commandant of the Defense Information School has, of course, suspended the activities of the committee pending your decision.

If additional information or documentation is required, please contact Sandy Riley (x76900).

Milton H. Hamilton

Attachment

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE

WASHINGTON D C 20301

COMPTROLLER
(Administration)

24 NOV 1986

MEMORANDUM FOR THE UNDER SECRETARY OF DEFENSE (ACQUISITION)

SUBJECT: Federal Advisory Committee Management

It has come to my attention that a Defense Science Board Task Force held a closed advisory committee meeting on 14 November 1986 without timely notice being published in the Federal Register, and without executing a proper determination to close the meeting. Further, I understand that additional meetings have been scheduled under the same conditions.

Section 10(a)2 of the Federal Advisory Committee Act (FACA) requires that timely notice of each meeting shall be published in the Federal Register. Timely notice has been determined by the Office of Management and Budget, and subsequently the General Services Administration, to be fifteen days. Whether or not the meeting is open or closed has no bearing on whether a timely notice is published.

Section 10(d) of the FACA requires that, if a meeting is to be closed, or partially closed, a determination shall be made in writing citing that portion of section 552b of title 5, USC, which is relevant. Determinations will be concurred in by the appropriate General Counsel or Judge Advocate General office and are to be signed by an appropriate official at least thirty days prior to the meeting date. The meeting Notice published in the Federal Register should reiterate the reasons contained in the determination to close the meeting.

I understand that the 14 November meeting was scheduled with full knowledge of the applicable laws and regulations pertaining to Federal Advisory Committees, and the decision was made to go ahead with it, nonetheless.

Besides violating the law, these actions create a potentially embarrassing situation for the Secretary, the Deputy Secretary, and you. In 1983 the House Government Operations Subcommittee, chaired by Congressman Brooks, held hearings on violations of advisory committee regulations pertaining to a Defense Science Board Task Force. The primary issue at that time concerned conflict-of-interest problems. Further, the General Accounting Office and the DoD Inspector General were requested to investigate overall DSB actions and procedures. These investigations proved embarrassing to the Department. At their conclusion, the Congress was advised that actions were being taken to prevent further abuses.

Although the FACA makes no provision for not providing timely notice, the GSA Interim Rule on Federal Advisory Committees provides in Section 101-6.1015 that, "in exceptional circumstances," an agency head may give less than fifteen days notice of a meeting, provided that the reasons are spelled out in the notice. DoD Directive 5105.18, "DoD Committee Management Program," provides that, "if an emergency situation arises whereby a notice is to be published in less than fifteen days before the meeting is scheduled, such notice may not be published without prior approval of the DoD Committee Management Officer." Prior to the DSB meeting, we were not advised that a meeting was to be held and, subsequently, we determined that the reasons for holding the meeting without timely notice do not fit the criteria of exceptional circumstances or an emergency situation. It should be noted that since FACA went into effect in 1973, we have approved only one instance where exceptional circumstances required a notice period of less than fifteen days.

It is requested that you take immediate action to ensure that the DSB operates in accordance with existing laws and regulations, and that you advise me of the actions that have been taken.

D. O. Cooke

D. O. Cooke
Deputy Assistant Secretary of Defense

Concur: [signature]
OGC

Prep'd by OMP-OASD(...)/SAF...4281
NO: JW ... JS
DATE: 11-21-96

THE UNDER SECRETARY OF DEFENSE

WASHINGTON, DC 20301

ACQUISITION

9 JAN 1987

MEMORANDUM FOR DEPUTY ASSISTANT SECRETARY OF DEFENSE
(ADMINISTRATION)

SUBJECT: Federal Advisory Committee Management

I have received your memorandum dated 24 November 1986, same subject, and want to assure you that it is my desire and intention that the DSB operate within both the letter and the intent of the law.

The issue at hand, the B-1B Defensive Avionics, required a quick-look effort. I needed to report its status to the Secretary and decide if I (and the DSB) needed to have more involvement with the program.

Since the DSB works closely with the various OSD consultants I asked the Chairman, C. A. Fowler, to organize a small group to do a preliminary review of the B-1B situation and report to me if the situation warranted further action.

Mr. Robert R. Everett, an OSD consultant but not a DSB member, then led a fact-finding group under the auspices of the Electronic Combat Task Force and reported to me on 24 November. At that time I asked the DSB to formalize the B-1B effort by forming a separate DSB Task Force and developing a "Terms of Reference" which would task the group to monitor the program closely.

Let me assure you that I and the entire DSB staff fully intend to meet all the requirements to publish DSB meetings on a timely basis. Indeed, should more crisis situations such as the B-1B arise, I will ensure the DSB Secretariat works with you to be certain that its approaches are both responsive to the Secretary and fully within the letter and the intent of the law.

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE

WASHINGTON D.C. 20301

COMPTROLLER
(Administration)

23 NOV 1984

OMP-OASD(C) COMEBACK CY/RM #3A326

MEMORANDUM FOR THE DIRECTOR, STRATEGIC DEFENSE INITIATIVE ORGANIZATION

SUBJECT: Federal Advisory Committee Management

The Federal Advisory Committee Act prescribes specific procedures for the establishment and operations of Federal Advisory Committees. Before such groups can be established, concurrence must be obtained from the General Services Administration. Federal departments and agencies must obtain this concurrence, in addition to complying with other procedural requirements before placing a committee in operation. Last July, at your request, I forwarded a memorandum to the Committee Management Secretariat, General Services Administration, requesting their concurrence in the establishment of the SDIO Advisory Committee. We were informally advised that the National Security Council had told GSA to put this request on "hold". Your staff was so notified. We have been advised that the request is still on "hold."

~~It has come to my attention that at least one meeting has been held by the committee and that others are being planned. No such actions should be taken by, or for, the committee until after it has been properly established pursuant to the Act.~~

Further, I am concerned that any publicity that may be given to meetings held by this committee before it has been properly established could embarrass both Secretary Weinberger and the President. Accordingly, it is requested that you ensure that no meetings are held and that no action is taken in the committee's name until such time as it has been formally chartered.

D. O. Cooke
Deputy Assistant Secretary of Defense

Prep'd by OMP-OASD(C)/3A326/x54281
A/O: _____ Typist _____
DATE: 11-23-84

OFFICE OF THE SECRETARY OF DEFENSE

WASHINGTON, D.C. 20301

DEC 24

MEMORANDUM FOR DEPUTY ASSISTANT SECRETARY OF DEFENSE
(ADMINISTRATION)

SUBJECT: Federal Advisory Committee Management
(your memorandum, 23 November 1984)

I appreciate your memorandum of 23 November on Federal Advisory Committee Management.

We have now cleared the White House and OMB and are anxious to move ahead quickly. The Secretary is in the process of approving the final candidates and I believe we have worked out an excellent arrangement for industrial invitees with the OSD General Counsel. In short, we are ready to go.

We are separately planning an in-depth program status review for all the organizations that execute and support the SDI. This will be from 21-23 January at the Air Force Space Division in Los Angeles.

This review would provide an excellent background for the individuals who will eventually serve on the Advisory Committee. Indeed, some have attended previous reviews in other capacities. Dr. Gerold Yonas, my Chief Scientist, has discussed this with your people and they suggested that the individuals be invited in the context of a site visit with no deliberations or other committee activities.

Thank you again for all your support!

Abe

James A. Abrahamson
Lieutenant General, USAF
Director, Strategic Defense
Initiative Organization

STATEMENT BY

WILLIAM H. CARROLL

GENERAL COUNSEL,
STRATEGIC DEFENSE INITIATIVE ORGANIZATION

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT
COMMITTEE ON GOVERNMENT AFFAIRS
UNITED STATES SENATE
100th CONGRESS SECOND SESSION

APRIL 19, 1988

85-796 0 - 88 - 3

GOOD AFTERNOON MR. CHAIRMAN. I'M PRIVILEGED TO APPEAR BEFORE YOU TODAY. I'M WILLIAM H. CARROLL, GENERAL COUNSEL FOR THE STRATEGIC DEFENSE INITIATIVE ORGANIZATION (SDIO).

MY PRESENTATION TODAY WILL ADDRESS OUR ORGANIZATION'S COMPLIANCE WITH THE FEDERAL ADVISORY COMMITTEE ACT (FACA), AND PROCEDURES FOR ACQUIRING CONTRACTED ADVISORY AND ASSISTANCE SERVICES (CAAS). I WILL DISCUSS CONTRACTS FOR STUDY EFFORTS INVOLVING WHAT IS FAMILIARLY REFERRED TO AS THE "EASTPORT GROUP". I WILL ALSO DISCUSS CONTRACTS AWARDED BY THE UNITED STATES NAVY, OFFICE OF NAVAL RESEARCH, TO THE UNIVERSITY OF SOUTHERN CALIFORNIA, INFORMATION SCIENCES INSTITUTE (ISI) FOR RESEARCH RELATED TO SDI COMMUNICATIONS, GRAPHICS AND SIMULATIONS.

COMPLIANCE WITH FACA

THE DEPARTMENT OF DEFENSE ESTABLISHED THE STRATEGIC DEFENSE INITIATIVE ORGANIZATION UNDER AN INTERIM CHARTER ISSUED IN APRIL 1984, AND WITH A SMALL CADRE OF PERSONNEL. IN THE SAME TIME FRAME, WORK WAS UNDERTAKEN TO ESTABLISH A STRATEGIC DEFENSE ADVISORY COMMITTEE. CONSULTATIONS WERE INITIATED WITH THE GENERAL SERVICES ADMINISTRATION (GSA). GSA CONSULTED WITH THE OFFICE OF MANAGEMENT AND BUDGET AND IT APPEARS THAT THE MATTER OF AN SDI ADVISORY COMMITTEE WAS

REVIEWED BY THE NATIONAL SECURITY COUNCIL. IN DECEMBER 1984, GSA ADVISED THE DEPARTMENT OF DEFENSE THAT REVIEW HAD BEEN COMPLETED, THAT THE COMMITTEE MET THE REQUIREMENTS OF THE FEDERAL ADVISORY COMMITTEE ACT AND THE GSA INTERIM RULE ON ADVISORY COMMITTEE MANAGEMENT, AND THAT GSA CONCURRED IN ITS ESTABLISHMENT.

NOTICE OF ESTABLISHMENT OF THE SDI ADVISORY COMMITTEE WAS PUBLISHED IN THE FEDERAL REGISTER ON DECEMBER 28, 1984, AND IN JANUARY 1985, COPIES OF THE COMMITTEE'S CHARTER WERE FILED WITH THE SENATE ARMED SERVICES COMMITTEE, THE HOUSE ARMED SERVICES COMMITTEE, THE LIBRARY OF CONGRESS AND THE COMMITTEE MANAGEMENT SECRETARIAT IN GSA. IN JANUARY 1987, FOLLOWING A SIMILAR PROCESS, RENEWAL OF THE SDI ADVISORY COMMITTEE FOR A TWO-YEAR PERIOD WAS APPROVED.

EDUCATION AND COUNSELING

IN 1985, THE SECRETARY OF DEFENSE APPROVED RECOMMENDATIONS FROM THE DIRECTOR OF SDIO OF NINE MEMBERS FOR THE SDI ADVISORY COMMITTEE. THE CHARTER ANTICIPATES FOUR TO SIX MEETINGS ANNUALLY OF THE COMMITTEE.

THE COMMITTEE IS BALANCED IN THAT IT IS COMPRISED OF MEMBERS FROM ACADEMIA, THE DEFENSE INDUSTRY, NON-PROFIT, FEDERALLY FUNDED RESEARCH AND DEVELOPMENT CENTERS AND FORMER CIVILIAN AND MILITARY SENIOR NATIONAL SECURITY OFFICIALS.

AT THE END OF OCTOBER 1985, AT THE REQUEST OF THE GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE, I ACCEPTED A DETAIL FROM THE DEFENSE LOGISTICS AGENCY, WHERE I WAS SERVING AS A SPECIAL ASSISTANT TO THE DIRECTOR FOR CONTRACTING INTEGRITY, TO ESTABLISH A LEGAL OFFICE IN THE NEW SDIO.

IN FEBRUARY 1986, THROUGH THE SDIO CHIEF SCIENTIST, I FURNISHED EACH OF THE SDI ADVISORY COMMITTEE MEMBERS A WRITTEN EXPLANATION OF THE CONFLICTS PROVISIONS OF DEPARTMENT OF DEFENSE DIRECTIVE 5500.7, AS WELL AS A COPY OF THE ENTIRE DIRECTIVE, AND ADVISED THE MEMBERS OF MY AVAILABILITY TO PROVIDE THEM COUNSEL IN THIS AREA. SINCE THAT TIME I HAVE GIVEN ORAL BRIEFINGS TO THE ENTIRE COMMITTEE AND RESPONDED TO INDIVIDUAL MEMBER'S REQUESTS FOR ADVICE.

AS MEMBERS' APPOINTMENTS ARE RENEWED AND NEW MEMBERS APPOINTED, I REVIEW THEIR FINANCIAL DISCLOSURE STATEMENTS AND ADVISE ON THE NECESSITY FOR ANY GENERAL DISQUALIFICATION

NOTICES. AS AN ORGANIZATION, WE HAVE IDENTIFIED AS A WEAKNESS IN OUR INTERNAL MANAGEMENT CONTROLS A BACKLOG OF PROCESSING REQUESTS FOR RENEWALS AND NEW APPOINTMENTS OF CONSULTANTS INCLUDING APPOINTMENTS TO THE SDI ADVISORY COMMITTEE. THAT BACKLOG WAS DUE IN LARGE MEASURE TO THE FACT THAT ONE PERSON HAD THE RESPONSIBILITY FOR PROCESSING ALL FULL-TIME PERMANENT EMPLOYEE APPOINTMENTS AND MILITARY TEMPORARY DUTY ASSIGNMENTS, AS WELL AS CONSULTANT APPOINTMENTS AND RENEWALS. IN FEBRUARY OF THIS YEAR OUR SDIO SUPPORT SERVICES DIRECTORATE FILLED A NEWLY ESTABLISHED POSITION THAT HAS PROCESSING OF CONSULTANT APPOINTMENTS AS A PRINCIPAL DUTY. WE EXPECT THAT WE WILL NOW HAVE TIMELY PROCESSING, INCLUDING REVIEW OF FINANCIAL DISCLOSURE SUBMISSIONS.

IN MARCH 1987, IN ORDER TO RESPOND TO SENATOR LEVIN'S REQUEST TO THE SECRETARY OF DEFENSE FOR INFORMATION ABOUT ALL GROUPS PROVIDING ADVICE TO DOD ON THE STRATEGIC DEFENSE INITIATIVE SINCE 1983, WE ASKED EACH OF OUR SDIO TECHNICAL AND ADMINISTRATIVE SUPPORT DIRECTORATES TO IDENTIFY ANY SOURCES OF ADVISORY SERVICES THAT WERE BEING PROVIDED TO THEM. IN REVIEWING THE RESPONSES, WE IDENTIFIED TWO GROUPS THAT WERE OPERATING AS ADVISORY COMMITTEES UNDER THE DEFINI-

TIONS OF FACA AND THE GSA INTERIM RULE THAT HAD NOT BEEN PROPERLY ESTABLISHED. THE DIRECTOR OF SDIO IMMEDIATELY TERMINATED THE OPERATION OF THOSE ENTITIES AND ADVISED THE HEAD OF EACH DIRECTORATE TO REVIEW ANY PROPOSED ESTABLISHMENT OF THEM AS A COMMITTEE WITH OUR DIRECTOR FOR ADMINISTRATIVE SUPPORT SERVICES AND MYSELF. WE ALSO REVIEWED THE RESULTS OF OUR REVIEW WITH SENIOR MEMBERS OF THE SDIO STAFF.

EACH MONTH I CONDUCT AN ETHICS AWARENESS BRIEFING IN ONE OF OUR TECHNICAL OR ADMINISTRATIVE SUPPORT DIRECTORATES. IT IS A COMPREHENSIVE BRIEFING BASED ON DODD 5500.7, THE ETHICS IN GOVERNMENT ACT, AND STATUTES FOCUSED ON THE POST-EMPLOYMENT LIMITATIONS PLACED ON MILITARY OFFICERS. ON OCCASION WE ARE ASSISTED IN THESE BRIEFINGS BY OUR LIAISON AGENT OF THE DEFENSE CRIMINAL INVESTIGATIVE SERVICE (DCIS). WE HAVE RECENTLY INCORPORATED COVERAGE OF THE FEDERAL ADVISORY COMMITTEE ACT AND IMPLEMENTING RULES INTO THAT MONTHLY BRIEFING.

THE SDI ADVISORY COMMITTEE ESTABLISHES SUBCOMMITTEES AND WORKING GROUPS TO ASSIST IT IN ITS RESPONSIBILITIES. WE MEET WITH SUBCOMMITTEES AND WORKING GROUPS AND BRIEF THEM ON THE CONFLICTS PROVISIONS OF DODD 5500.7.

ACQUIRING ADVISORY SERVICES

WE HAVE BEEN ASKED TO EXPLAIN HOW SDIO DECIDES, WHEN FORMING A NEW ADVISORY COMMITTEE, WHETHER TO CREATE A COMMITTEE SUBJECT TO FACA, AND TO ADDRESS THE NATIONAL TEST BED AD HOC ADVISORY GROUP AND THE EASTPORT GROUP, WHICH HAVE BEEN DESCRIBED AS ADVISORY COMMITTEES WHICH DO NOT COMPLY WITH FACA.

DEPARTMENT OF DEFENSE DIRECTIVE 4205.2, DATED JANUARY 27, 1986, ESTABLISHES POLICY, ASSIGNS RESPONSIBILITIES, AND PRESCRIBES PROCEDURES FOR PLANNING, MANAGING, EVALUATING, AND REPORTING "CONTRACTED ADVISORY AND ASSISTANCE SERVICES" (CAAS). THE DIRECTIVE DEFINES CAAS AS:

"... THOSE SERVICES ACQUIRED DIRECTLY BY THE DEPARTMENT OF DEFENSE FROM NONGOVERNMENTAL SOURCES TO SUPPORT OR IMPROVE AGENCY POLICY DEVELOPMENT OR DECISION-MAKING, OR TO SUPPORT OR IMPROVE THE MANAGEMENT OF ORGANIZATIONS OR THE OPERATION OF WEAPON SYSTEMS, EQUIPMENT, AND COMPONENTS."

THE DIRECTIVE IDENTIFIES FOUR CATEGORIES OF CONTRACTED ADVISORY AND ASSISTANCE SERVICES: A--INDIVIDUAL EXPERTS AND

CONSULTANTS; B--STUDIES, ANALYSES, AND EVALUATIONS; C--MANAGEMENT SUPPORT SERVICES; AND D--ENGINEERING AND TECHNICAL SERVICES.

SDIO HAS DRAFTED AN ADMINISTRATIVE INSTRUCTION TO IMPLEMENT THE PROVISIONS OF DOD DIRECTIVE 4205.2 BY ESTABLISHING POLICIES, ASSIGNING RESPONSIBILITIES, DEFINING TERMS AND PRESCRIBING PROCEDURES FOR PLANNING, MANAGING, EVALUATING, AND REPORTING CAAS WITHIN THE SDI PROGRAM

THE ADMINISTRATIVE INSTRUCTION PROVIDES FOR THE DIRECTOR, SDIO TO APPOINT AN SDIO DIRECTOR FOR CAAS, WHO MUST BE AT THE FLAG OR GENERAL OFFICER OR SENIOR EXECUTIVE SERVICE LEVEL. THE SDIO INSTRUCTION HAS BEEN REVIEWED BY THE MILITARY DEPARTMENTS AND IS READY FOR PUBLICATION. THE DIRECTOR, SDIO, HAS APPOINTED THE SDIO DEPUTY COMPTROLLER, A MEMBER OF THE SENIOR EXECUTIVE SERVICE AS DIRECTOR, CAAS.

WHILE DOD DIRECTIVE 4205.2 RECOGNIZES THAT ADVICE ON AGENCY POLICY DEVELOPMENT, ORGANIZATION MANAGEMENT AND WEAPONS SYSTEM OPERATION MAY BE OBTAINED BY CONTRACT, IT IS NOT A BASIS TO AVOID FACA THROUGH THE CONTRACTING PROCESS. WHETHER A PROPOSED CONTRACT IS APPROPRIATE UNDER RELEVANT

POLICIES IS DETERMINED THROUGH REVIEW BY THE DIRECTOR, CAAS, THE SDIO CONTRACTING DIRECTOR, AND ME. IF THE MATTER REQUIRES A LEGAL INTERPRETATION, THAT IS MY RESPONSIBILITY WITHIN THE SDIO. AS NOTED ABOVE, WHEN WE IDENTIFIED GROUPS THAT WERE OPERATING AS ADVISORY COMMITTEES WITHOUT BEING ESTABLISHED UNDER FACA, WE POINTED THEM OUT TO THE DIRECTOR WHO ORDERED THEIR IMMEDIATE TERMINATION. TO THE BEST OF MY KNOWLEDGE, WE HAVE NOT SINCE ESTABLISHED ANY ADVISORY GROUP THAT FALLS UNDER FACA.

NATIONAL TEST BED AD HOC ADVISORY GROUP

THE EARLIER FORMATIONS OF THE EASTPORT GROUP AND THE NATIONAL TEST BED AD HOC ADVISORY COMMITTEE ARE CLOSELY LINKED WITH SDI BATTLE MANAGEMENT RESEARCH OF COMMAND, CONTROL AND COMMUNICATIONS (BM/C3) OF AND AMONG THE SEVERAL PLANNED ELEMENTS OF THE MULTI-LAYERED STRATEGIC DEFENSE SYSTEM. SOMETIMES REFERRED TO COLLOQUIALLY AS THE "LONG POLE IN THE TENT" OF SDI RESEARCH, BM/C3 ISSUES HAVE STIMULATED SEARCHES FOR EXPERTISE, PARTICULARLY IN COMPUTER SCIENCES, NOT READILY AVAILABLE WITHIN THE GOVERNMENT.

THE MAGNITUDE AND COMPLEXITY OF A MULTI-LAYERED DEFENSE AGAINST POTENTIAL BALLISTIC MISSILE ATTACKS, DICTATE THAT THE DEFENSE'S FEASIBILITY BE DETERMINED IN PART BY SIMULATIONS AS WELL AS BY FIELD TESTING OF SYSTEM ELEMENTS. THE NATIONAL TEST BED IS A PRINCIPAL INITIATIVE OF THE SDI PROGRAM WHICH WILL LINK EXISTING TEST RANGES, INCLUDING THE ABM TREATY DESIGNATED TEST SITES AT U.S. ARMY KWAJALEIN ATOLL AND THE WHITE SANDS MISSILE RANGE, AND OTHER MILITARY TESTING FACILITIES THROUGHOUT THE COUNTRY TO A NATIONAL TEST FACILITY CURRENTLY UNDER CONSTRUCTION AT FALCON AIR STATION, COLORADO SPRINGS COLORADO. THE USAF, AIR FORCE SYSTEMS COMMAND, ELECTRONIC SYSTEMS DIVISION (ESD), HANSCOM AIR FORCE BASE, BEDFORD, MASSACHUSETTS, IN SUPPORT OF THE NATIONAL TEST BED JOINT PROGRAM OFFICE, RECENTLY AWARDED A COMPETITIVE CONTRACT TO THE MARTIN-MARIETTA CORPORATION TO EQUIP AND OPERATE THE NATIONAL TEST FACILITY AND BEGIN LINKING IT TO OTHER COMPONENTS OF THE NATIONAL TEST BED.

THE NATIONAL TEST BED CONTRACTOR SELECTION PROCESS HAD STARTED WITH COMPETITIVE AWARDS OF FOUR CONTRACTS FOR PHASE I, CONCEPT DEFINITIONS, OF APPROXIMATELY ONE YEARS' DURATION. AT THE END OF THAT YEAR, TWO OF THE FOUR CONTRACTORS WERE SELECTED FOR A SECOND PHASE, OF APPROXIMATELY THE SAME

DURATION, FOR FURTHER DEFINITION OF THE REQUIREMETNS FOR A NATIONAL TEST BED.

BECAUSE BATTLE MANAGEMENT/C3 CONCEPTS FOR THE SDI PROGRAM WERE IN AN EVOLUTIONARY STAGE, THE SDI SYSTEMS OFFICE IDENTIFIED A NEED TO ASSURE THAT EVOLUTIONARY BATTLE MANAGEMENT CONCEPTS FOR POTENTIAL STRATEGIC DEFENSE SYSTEMS WERE BEING REFLECTED IN THE NATIONAL TEST BED PROGRAM, PARTICULARLY, THE REQUEST FOR PROPOSALS BEING DEVELOPED BY ESD FOR THE FINAL, OR PHASE III, NTB CONTRACT AWARD.

COMPRISED OF INDIVIDUALS ALREADY WORKING ON STRATEGIC SYSTEMS BATTLE MANAGEMENT CONCEPTS, THE NATIONAL TEST BED AD HOC ADVISORY GROUP WAS FORMED PRINCIPALLY TO REVIEW THE RFP FOR THE NATIONAL TEST BED AND PROVIDE TO THE JOINT PROGRAM OFFICE, RELEVANT INFORMATION ON SIMULATION ENGINEERING AND BM/C3 CONCEPTS BEING DEVELOPED FOR POTENTIAL STRATEGIC DEFENSE SYSTEM DESIGNS.

WHEN THE NATIONAL TEST BED AD HOC ADVISORY GROUP WAS REPORTED LAST SPRING, WE DESCRIBED IT AS A STUDY UNDER CONTRACT, BECAUSE NON-GOVERNMENT MEMBERS WERE INDIVIDUALLY WORKING UNDER CONTRACTS RELATED TO SDI BATTLE MANAGEMENT

CONCEPTS. TECHNICALLY, HOWEVER THAT GROUP CAN REASONABLY BE INTERPRETED AS FALLING WITHIN EXCEPTIONS PROVIDED UNDER THE GSA INTERIM COMMITTEE MANAGEMENT RULE OF APRIL 28, 1983, AND RETAINED IN THE FINAL DECEMBER 2, 1987 GSA IMPLEMENTING RULE.

THE BACKGROUND STATEMENT OF THE GSA INTERIM RULE PUBLISHED IN 48 FEDERAL REGISTER (FR) 19234 STATED THAT GSA WAS IN GENERAL AGREEMENT WITH A RECOMMENDATION OF THE ADMINISTRATIVE CONFERENCE, STATED, IN PART, AS FOLLOWS:

* * *

a. Uncertainty as to the applicability of FACA to one-time or occasional meetings between ad-hoc groups and government officials has tended to discourage useful contacts with the private sector. It is impractical to require such meetings to conform with the Act's requirements regarding chartering, advance notice, and structure of the committee. The Administrative Conference believes that the Act is not applicable to ad hoc, unstructured, noncontinuing groups and that GSA's guidelines should make this clear. Coverage of such groups would not further the purposes of the Act.

* * *

WHILE THE DECEMBER 2, 1987 FINAL RULE DOES NOT ADOPT A RECOMMENDED EXCLUSION FOR AD HOC GROUPS, BOTH THE INTERIM RULE AND THE FINAL RULE CITE, AS AN EXAMPLE OF ADVISORY MEETINGS OR GROUPS NOT COVERED BY THE ACT:

b. Any meeting with a group initiated by the President or one or more Federal official(s) for the purpose of exchanging facts or information.

BECAUSE THE PRINCIPAL PURPOSE OF THE NATIONAL TEST BED AD HOC ADVISORY COMMITTEE WAS TO IMPART INFORMATION ABOUT SIMULATION ENGINEERING AND BATTLE MANAGEMENT CONCEPTS FOR POTENTIAL STRATEGIC SYSTEMS DESIGNS TO THE JPO PREPARING THE NATIONAL TEST BED COMPETITIVE SOLICITATION, IT IS REASONABLE TO CONCLUDE THAT THIS GROUP DID NOT FALL WITHIN THE SCOPE OF THE ACT.

EASTPORT STUDIES

ONE OF THE FIRST INITIATIVES OF THE NEWLY ESTABLISHED SDI ORGANIZATION WAS AWARD OF 10 CONTRACTS IN THE SPRING OF

1984, THROUGH THE DEPARTMENT OF DEFENSE, WASHINGTON HEADQUARTERS SERVICES, FOR STUDIES OF POTENTIAL STRATEGIC DEFENSE INITIATIVE SYSTEM ARCHITECTURES.

IN APRIL 1985, BASED ON INTERIM REVIEWS OF THESE CONTRACTS, THE SDIO SYSTEMS OFFICE HAD REASON TO CONCLUDE THAT THE ARCHITECTURE STUDY CONTRACTS WERE NOT ADEQUATELY ADDRESSING ONE OF THE SDI PROGRAM'S FUNDAMENTAL OBJECTIVES, I.E., THAT THE BATTLE MANAGEMENT SYSTEM AND ITS SOFTWARE BE DESIGNED AS AN INTEGRAL PART OF THE BALLISTIC MISSILE DEFENSE SYSTEM AS A WHOLE, AND NOT AS A SUBSEQUENT APPLICATION OF HOW THE SENSORS AND WEAPONS WOULD COMMUNICATE WITH ONE ANOTHER AND WITH COMMAND CENTERS.

THE CONTRACT VALUE OF EACH OF THE 10 ARCHITECTURE STUDY CONTRACTS WAS APPROXIMATELY $1 MILLION. SDIO ANTICIPATED REQUESTING THE WASHINGTON HEADQUARTERS SERVICE TO AWARD PHASE II ARCHITECTURE STUDY CONTRACTS TO FIVE OF THE 10 PHASE I CONTRACTORS, AND ESTIMATED THAT THE COST OF EACH PHASE II CONTRACT WOULD BE APPROXIMATELY $5 MILLION. THE POTENTIAL UNDEREMPHASIS OF BATTLE MANAGEMENT DURING THE ARCHITECTURE STUDY PHASES OF THE SDI PROGRAM POSED LONG TERM STRATEGIC AND POLICY PROBLEMS, AND IMMEDIATE FINANCIAL INVESTMENT PROBLEMS

FOR THE SDIO. IN RESPONSE TO THESE POTENTIAL PROBLEMS, THE SDIO SYSTEMS OFFICE, IN CONSULTATION WITH BATTLE MANAGEMENT AND SOFTWARE SUPPORT SPECIALISTS WITHIN THE DEPARTMENT OF DEFENSE, IDENTIFIED A REQUIREMENT FOR AN IMMEDIATE REVIEW OF THE SDI PROGRAM OBJECTIVES AND THE 10 PHASE I ARCHITECTURE CONTRACTS BY LEADING EXPERTS IN THE COUNTRY IN BATTLE MANAGEMENT AND THE SUPPORTING COMMUNICATION HARDWARE AND SOFTWARE TECHNOLOGIES.

THE SDI ORGANIZATION DID NOT ESTABLISH ITS OWN CONTRACTING OFFICE UNTIL OCTOBER 1985. THUS, IN APRIL 1985, THE SDIO SYSTEMS OFFICE, IN PARALLEL WITH ITS EFFORTS TO IDENTIFY TECHNICAL EXPERTISE NEEDED FOR REVIEW OF THE ARCHITECTURE STUDY CONTRACTS AND PROGRAM BATTLE MANAGEMENT CONCEPTS, SURVEYED DEPARTMENT OF DEFENSE CONTRACTING ACTIVITIES FOR EXPERTISE IN ACQUIRING SIMILAR REVIEWS.

IN MAY 1985, THE USAF OFFICE OF SCIENTIFIC RESEARCH (AFOSR) INDICATED WILLINGNESS TO CONTRACT FOR THE SDIO REQUIREMENT. AFOSR HAD APPROXIMATELY 25 YEARS' EXPERIENCE IN CONTRACTING FOR SERVICES OF THE TYPE REQUIRED BY SDIO. IN 1984, AFOSR HAD AWARDED CONTRACTS IN SUPPORT OF RESEARCH NEEDS IN FOUR GENERIC AREAS, ONE OF WHICH WAS "MATHEMATICAL

AND INFORMATION SCIENCES". THE UNIVERSITY OF MARYLAND HAD BEEN AWARDED THE CONTRACT FOR THE MATHEMATICAL AND INFORMATION SCIENCES REQUIREMENT.

THE STATEMENTS OF WORK FOR EACH OF THE AFOSR CONTRACTS WERE SIMILARLY STRUCTURED AND INCLUDED THE FOLLOWING PROVISION:

"B. UPON WRITTEN ORDER OF THE CONTRACTING OFFICER OR HIS DULY AUTHORIZED REPRESENTATIVE, ASSEMBLE PANELS OR GROUPS TO EVALUATE ALL OR PORTIONS OF THE RESEARCH PROGRAMS OF THE DIRECTORATE OF MATHEMATICAL AND INFORMATION SCIENCES, AND SUBMIT REPORTS AS REQUIRED BY CONTRACT LINE ITEM (CLIN) 0002AA OF THE CONTRACT."

IN ACCORDANCE WITH RELEVANT ACQUISITION REGULATIONS, AFOSR FORMALLY DETERMINED THE APPROPRIATENESS OF ACQUIRING THE PERFORMANCE OF THE SDIO REQUESTED STUDY AND EVALUATION, AND PREPARATION OF RESULTING REPORTS AS NON-PERSONAL SERVICES. THE AFOSR DETERMINATION AND FINDINGS STATED, IN RELEVANT PART:

"(A) THE DUTIES TO BE PERFORMED ARE OF A TEMPORARY OR INTERMITTENT NATURE; (B) PROCUREMENT OF SERVICES IS ADVANTAGEOUS TO THE NATIONAL DEFENSE; (C) THE EXISTING FACILITIES OF THE AIR FORCE ARE INADEQUATE TO FURNISH THE SERVICES; AND (D) IT IS NOT FEASIBLE TO OBTAIN PERSONNEL WITH THE NECESSARY SKILLS THROUGH NORMAL CIVIL SERVICE APPOINTMENT PROCEDURES."

HAVING IDENTIFIED AN EXPERIENCED CONTRACTING ACTIVITY, THE SDIO SYSTEMS OFFICE INITIATED ACTION TO FURNISH FUNDS TO THE AFOSR ON MAY 29, 1985. ASSUMING THE CONTRACT WOULD BE EXECUTED SHORTLY THEREAFTER, AND BASED UPON THE URGENCY OF THE REQUIREMENT, THE SDIO SYSTEMS OFFICE APPROVED COMMENCEMENT OF THE REVIEW ON JUNE 10, 1985. HOWEVER, BECAUSE OF DELAYS IN PROCESSING THE FUNDS TRANSFER, CONTRACTING AUTHORIZATIONS AND CONTRACT NEGOTIATIONS, THE MODIFICATION TO THE UNIVERSITY OF MARYLAND CONTRACT WAS NOT EXECUTED UNTIL NOVEMBER 1, 1985. THE CONTRACT REPORT WAS DELIVERED IN DECEMBER 1985.

THE CONTRACT CONTAINED THE FOLLOWING CONFLICTS OF INTEREST PROVISION:

"CONFLICT OF INTEREST AND DISCLOSURE OF INFORMATION"

a. Pursuant to the guidance set forth in the (Federal Acquisition Regulation) FAR 9.500, a potential organizational conflict of interest will be avoided by having the evaluators verify that they have no conflict of interest. Evaluators must also agree not to use the proposal for any purpose other than evaluation and not reproduce, duplicate or disclose, in whole, or part, the proposal for any purpose whatsoever.

b. The contractor will insure that each evaluator will sign the following statement and return it with each evaluation report submitted outside of panel reviews.

'I certify that I am not an employee of nor have any financial interest in the source of this proposal, report or paper at the time of this evaluation. I also certify that I have not reproduced, duplicated or disclosed, in whole or part, the proposal for any purpose whatsoever.'

c. The contractor will insure that each evaluator attending a panel review is excused from the review during the evaluation of any proposal, report or paper from his place of

employment or from any organization in which the evaluator has a financial interest. In addition, each reviewer will sign the following statement of verification to cover the entire panel review of proposals:

'I certify that I am not an employee of nor have any financial interest in the source of the proposals, reports or papers which I have evaluated on this panel. I also certify that I have not used and will not use these proposals for any purpose other than evaluation and have not reproduced, duplicated or disclosed, in whole or part, these proposal for any purpose whatsoever.'

d. The verification will be submitted to the Government with the evaluations returned to the Air Force Program Manager."

ON SEPTEMBER 24, 1986, THE GENERAL ACCOUNTING OFFICE, IN RESPONSE TO A REQUEST FROM CONGRESSMAN ROBERT J. MRAZEK, COMPLETED A REVIEW OF THE MODIFICATION TO THE AFOSR CONTRACT WITH THE UNIVERSITY OF MARYLAND FOR REVIEW OF THE SDIO BATTLE MANAGEMENT ISSUES, CONCLUDING THAT:

"...this action did not involve an improper use of personal services contracts and did not circumvent the limitation on compensation for experts and consultants."

DURING REVIEW OF THE CONTRACT, WE LEARNED THAT THE UNIVERSITY HAD NOT OBTAINED THE CERTIFICATIONS REQUIRED UNDER THE CONFLICTS OF INTEREST CLAUSE. HOWEVER, WE HAVE NO INDICATIONS THAT ANY OF THE PANEL MEMBERS HAD ANY FINANCIAL INTEREST IN ANY OF THE 10 PHASE I CONTRACTORS OR THAT THEY USED THE PHASE I CONTRACTS UNDER REVIEW FOR PURPOSES OTHER THAN EVALUATION.

IN CONCLUDING ITS REVIEW, THE GAO DID STATE THAT IT BELIEVED THAT CONTRACTS WITH EDUCATIONAL INSTITUTIONS SHOULD NOT BE USED FOR THE PROCUREMENT OF THE SERVICES OF EXPERTS AND CONSULTANTS.

AFTER COMPLETION OF THE AFOSR CONTRACT IN DECEMBER 1985, THE SDIO SYSTEMS OFFICE IDENTIFIED A NEED TO REVIEW BATTLE MANAGEMENT CONCEPTS BEING DEVELOPED UNDER CONTRACTS FOR THE NATIONAL TEST BED AS WELL AS RELATED SIMULATION ISSUES. BY THIS TIME, THE NEWLY ESTABLISHED SDIO CONTRACTING OFFICE HAD PROCESSED AN AWARD TO ANSER FOR SYSTEMS ENGINEER-

ING AND TECHNICAL ASSISTANCE FOR THE SDIO SYSTEMS OFFICE WE DETERMINED THAT IT WOULD BE APPROPRIATE FOR ANSER TO USE MEMBERS OF THE PANEL ASSEMBLED UNDER THE UNIVERSITY OF MARYLAND CONTRACT AMONG THEIR CONSULTANTS.

SDIO'S CONTRACT WITH ANSER CONTAINS AN ORGANIZATIONAL CONFLICT OF INTEREST CLAUSE WHICH PROHIBITS ANSER FROM COMPETING FOR CONTRACTS IN THE AREAS IN WHICH IT PROVIDES SYSTEMS ENGINEERING AND TECHNICAL ASSISTANCE TO THE SDIO SYSTEMS OFFICE.

ANSER'S CONTRACTS WITH ITS CONSULTANTS REQUIRE THE CONSULTANTS TO SUBMIT A STATEMENT OF AFFILIATIONS AND REFRAIN FROM ANY USE OF THEIR POSITION THAT IS, OR COULD APPEAR TO BE FOR PRIVATE GAIN FOR THEMSELVES. ANSER DOES NOT PROHIBIT A CONSULTANT'S EMPLOYER FROM COMPETING FOR CONTRACTS.

THE TASK OF THE ANSER CONTRACT UNDER WHICH STUDIES INVOLVING EXPERTS PREVIOUSLY ASSEMBLED UNDER THE AFOSR CONTRACT WITH THE UNIVERSITY OF MARYLAND HAS EXPIRED. A DETERMINATION AS TO WHETHER SDIO HAS A REQUIREMENT TO RENEW THIS TASK IS UNDER REVIEW.

OFFICE OF NAVAL RESEARCH CONTRACTS

IN DECEMBER 1985, THE UNIVERSITY OF SOUTHERN CALIFORNIA, INSTITUTE FOR SCIENCES INFORMATION (ISI) SUBMITTED A PROPOSAL TO THE U.S. NAVY, OFFICE OF NAVAL RESEARCH (ONR) FOR RESEARCH RELATED TO SDI COMMUNICATIONS. THE PROPOSAL IDENTIFIED DR. DANNY COHEN AS PRINCIPAL INVESTIGATOR. UNDER THE AIR FORCE OFFICE OF SCIENTIFIC RESEARCH CONTRACT WITH THE UNIVERSITY OF MARYLAND FOR SDI BATTLE MANAGEMENT REVIEW, DR. COHEN HAD BEEN IDENTIFIED AS PANEL CHAIRMAN.

AS NOTED ABOVE, THE AIR FORCE OSR CONTRACT WITH THE UNIVERSITY OF MARYLAND CONTAINED A CONFLICTS OF INTEREST CLAUSE DESIGNED TO ASSURE THAT EVALUATORS DID NOT HAVE INTERESTS IN PROPOSALS UNDER REVIEW AND TO ASSURE THAT PROPOSALS UNDER REVIEW WOULD ONLY BE USED FOR PURPOSES OF EVALUATION. WHILE THE AFOSR CONTRACTOR DID NOT OBTAIN CERTIFICATIONS FROM THE PANEL REVIEWING SDI ARCHITECTURE STUDY CONTRACTS, IT DOES NOT APPEAR THAT ANY OF THE MEMBERS VIOLATED EITHER OF THE CONDITIONS TO WHICH CERTIFICATION WAS REQUIRED.

THE PANEL ASSEMBLED UNDER THE UNIVERSITY OF MARYLAND CONTRACT MADE RECOMMENDATIONS RELATIVE TO TECHNOLOGY RESEARCH IN COMPUTING SOFTWARE, PROCESSING HARDWARE, AND COMMUNICATIONS. IT IS NOT LIKELY THAT THE AFOSR CONFLICTS CLAUSE AND THE REQUIRED CERTIFICATIONS COULD BE CONSTRUED AS PRECLUDING THE EMPLOYER OF ANY PANEL MEMBER FROM SUBMITTING A PROPOSAL TO PERFORM RESEARCH IN AN AREA IN WHICH THE PANEL HAD DEVELOPED RECOMMENDATIONS.

IN MAY 1986 ONR AWARDED CONTRACT N000014-86-C-0311 TO THE UNIVERSITY OF SOUTHERN CALIFORNIA, ISI, FOR RESEARCH IN SDI RELATED COMMUNICATIONS. THE CONTRACT WAS AWARDED AS COMPETITIVE UNDER THE BROAD AGENCY ANNOUNCEMENT PROCEDURES OF SUBPART 6.102(d)(2) OF THE FEDERAL ACQUISITION REGULATION. THE BROAD AGENCY ANNOUNCEMENT HAD BEEN ISSUED IN APRIL 1985 BY ONR FOR LONG RANGE NAVAL SCIENTIFIC RESEARCH.

IN MARCH 1987, A RECENTLY PUBLISHED MAGAZINE ARTICLE ASSERTING THAT ONR'S CONTRACT WITH THE UNIVERSITY OF SOUTHERN CALIFORNIA, ISI WAS IMPROPER BECAUSE OF DR. COHEN'S PARTICIPATION IN THE USAF OSR CONTRACT WITH THE UNIVERSITY OF MARYLAND, CAUSED A REVIEW OF THE AWARD OF NOO014-86-C-0311 BY ONR CONTRACTING, LEGAL AND SCIENTIFIC PERSONNEL. CONTRACTING

AND LEGAL PERSONNEL REVIEWED THE BROAD AGENCY ANNOUNCEMENT UNDER WHICH THE CONTRACT HAD BEEN AWARDED AS COMPETITIVE AND DID NOT THINK THAT ITS SCOPE WAS BROAD ENOUGH TO ENCOMPASS A PROPOSAL FOR SDI COMMUNICATIONS RESEARCH. IT IS MY UNDERSTANDING THAT THE ONR SCIENTIFIC OFFICER THOUGHT THAT THE SDI COMMUNICATION CONCEPTS COULD BE RELATED TO NAVY FLEET COMMUNICATIONS CONCEPTS.

RESPONDING TO CONCERNS FROM THE SDIO SYSTEMS OFFICE ABOUT POTENTIALLY STOPPING A NECESSARY, ONGOING RESEARCH PROJECT, IN MARCH 1987 I ATTENDED A MEETING AT ONR TO REVIEW ONR'S RESPONSES TO THE CONCLUSION THAT THE CONTRACT WAS NOT WITHIN THE SCOPE OF THE SOLICITATION UNDER WHICH IT WAS AWARDED. AT THAT MEETING, IT WAS DETERMINED THAT SDIO AND ONR TECHNICAL PERSONNEL WOULD REVIEW THE STATUS OF PERFORMANCE AND DEVELOP A WORK STATEMENT FOR A COMPETITIVE SOLICITATION FOR WORK WHICH HAD NOT YET BEEN SUBSTANTIALLY COMPLETED UNDER CONTRACT N00014-86-C-0311. AS A COROLLARY, THE TECHNICAL PERSONNEL WOULD DEVELOP A RESTRUCTURED STATEMENT OF WORK TO BRING N00014-86-C-0311 TO AN EARLIER CONCLUSION.

ON JULY 20, 1987, ONR EXECUTED MODIFICATION NO. 2 TO CONTRACT N00014-86-C-0311 RESTRUCTURING THE CONTRACT, REDUCING ITS VALUE AND PERIOD OF PERFORMANCE.

ON JULY 23, 1987, ONR ISSUED REQUEST FOR PROPOSALS NO. N00014-86-R-0022 SEEKING OFFERS TO PROVIDE CONCEPTUAL SUPPORT FOR THE SDI NET COMMUNICATIONS NETWORK AND DESIGNS AND CONCEPTS FOR THE SDI OPERATIONAL COMMUNICATIONS NETWORK. THE SOLICITATION FURTHER STATED A REQUIREMENT THAT COMPUTER GRAPHICS TECHNIQUES BE DEVELOPED IN AID OF MAN-IN-THE-LOOP COMMAND AND CONTROL OF THE SDI SYSTEM. MODIFICATIONS WERE ISSUED TO THE SOLICITATION ON JULY 30, 1987 AND AUGUST 14, 1987. ONR RECEIVED THREE PROPOSALS IN RESPONSE TO THE SOLICITATION, INCLUDING ONE FROM THE UNIVERSITY OF SOUTHERN CALIFORNIA, ISI. THE SELECTION OF THE UNIVERSITY OF SOUTHERN CALIFORNIA, ISI, BY THE ONR NEGOTIATING TEAM HAVE BEEN FURNISHED TO THE COMMITTEE STAFF. REVIEW BY SENIOR ONR CONTRACTOR PERSONNEL HAS NOT BEEN COMPLETED.

SCOPE OF DOD STANDARDS OF CONDUCT DIRECTIVE, DODD 5500.7

DEPARTMENT OF DEFENSE DIRECTIVE 5500.7 "...PRESCRIBES STANDARDS OF CONDUCT REQUIRED OF ALL DOD PERSONNEL...". WITH

RESPECT TO EMPLOYEES OF DEFENSE CONTRACTORS, DODD 5500.7 ESTABLISHES CRITERIA AND PROCEDURES FOR REPORTS REQUIRED OF CERTAIN FORMER AND RETIRED MILITARY OFFICERS AND FORMER DOD CIVILIAN OFFICERS WHO ARE REQUIRED BY STATUTE TO MAKE SUCH REPORTS.

DODD 5500.7's PROVISIONS REQUIRING FINANCIAL DISCLOSURE AND PROHIBITING CONFLICTS OF INTERESTS IMPLEMENT STATUTES THAT SPECIFICALLY REGULATE CONDUCT OF GOVERNMENT PERSONNEL. DODD 5500.7 DOES NOT EXTEND THOSE REQUIREMENTS AND PROHIBITIONS TO INDIVIDUALS WHO ARE NOT IN GOVERNMENT SERVICE. THE FEDERAL ACQUISITION REGULATION DOES PROSCRIBE CERTAIN CONFLICTS OF INTEREST THAT A COMMERCIAL CONTRACTOR ORGANIZATION MAY HAVE WHEN PROVIDING ADVICE AND ASSISTANCE TO THE DEPARTMENT OF DEFENSE. THE AIR FORCE OSR CONTRACT WITH THE UNIVERSITY OF MARYLAND AND SDIO'S CONTRACT WITH ANSER CONTAIN ORGANIZATIONAL CONFLICT OF INTEREST PROVISIONS.

THIS COMPLETES MY PRESENTATION, MR. CHAIRMAN. I'D BE PLEASED TO ANSWER ANY QUESTIONS.

JOHN GLENN, OHIO, CHAIRMAN

LAWTON CHILES, FLORIDA
SAM NUNN, GEORGIA
CARL LEVIN, MICHIGAN
JIM SASSER, TENNESSEE
DAVID PRYOR, ARKANSAS
GEORGE J. MITCHELL, MAINE
JEFF BINGAMAN, NEW MEXICO

WILLIAM V. ROTH, JR., DELAWARE
TED STEVENS, ALASKA
WILLIAM S. COHEN, MAINE
WARREN B. RUDMAN, NEW HAMPSHIRE
JOHN HEINZ, PENNSYLVANIA
PAUL S. TRIBLE, JR., VIRGINIA

LEONARD WEISS, STAFF DIRECTOR
JO ANNE BARNHART, MINORITY STAFF DIRECTOR

United States Senate
COMMITTEE ON
GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510-6250

April 22, 1988

Mr. William Carroll
General Counsel
Strategic Defense Initiative Organization
The Pentagon
Washington, D.C. 20301-7100

Dear Mr. Carroll:

Thank you for appearing at our hearing on DOD and SDIO compliance with the Federal Advisory Committee Act on April 19. The Committee appreciates your contribution to the hearing, both in your prepared testimony and in the subsequent question and answer period.

In order to ensure as complete and detailed a hearing record as possible I would like to ask you to reply, in writing, to the following questions. I ask that you reply as soon as possible, but no later than May 6, 1988.

1. I understand that within DOD and SDIO, there are a number of possible ways for a committee member to resolve actual or potential conflicts of interest. The Committee's review indicates that the preferred method of resolution is to have the member "disqualify" himself from considering any matters relating to these interests. DOD's new Standards of Conduct do not address who is responsible for enforcing the agreement to disqualify. How does SDIO ensure that members do recuse themselves?

2. Your written testimony indicated that SDIO consulted with GSA and complied with all FACA requirements when chartering the SDI Advisory Committee in January 1985. Yet four months later, when SDIO identified a need for assembling a group of leading experts on battle management and software technologies, it did not go to GSA or Mr. Cooke's office for similar consultation. Instead, it went throughout DOD to find an office which would fund a contract for the creation of this advisory group. Why was there a difference in approach?

3. In your written testimony you explained why you believe the National Test Bed Ad Hoc Advisory Group was not covered by FACA based on your interpretation of GSA's implementing regulations. At the time this group was established, did you consult with GSA's Committee Management Secretariat or Mr. Cooke's office to determine if your interpretation was correct?

4. I understand that you are the Ethics Officer in SDIO. What steps did you take to ensure that there were no potential or actual conflicts of interest with members on the Eastport Group? What efforts does SDIO take to screen members of advisory committees set up by contractors for onflicts of interest?

I look forward to your reply.

Best wishes.

Sincerely,

John Glenn
Chairman

JG/ael

DEPARTMENT OF DEFENSE
STRATEGIC DEFENSE INITIATIVE ORGANIZATION
WASHINGTON, DC 20301-7100

GC

May 11, 1988

The Honorable John Glenn
Chairman
Committee On Governmental Affairs
United States Senate
Washington, D.C. 20510-6250

Dear Mr. Chairman:

This is in response to your letter of April 22, 1988 requesting replies to questions to complete the record for the Committee's April I9, 1988 hearing on the Federal Advisory Committee Act (FACA). Replies are numbered in the sequence of questions stated in the April 22 letter.

1. As members of the Strategic Defense Initiative Advisory Committee (SDIAC) are appointed annually as consultants, their financial disclosure statements are reviewed and they are then required to execute disqualification statements with respect to all entities in which they have a financial interest. These statements are addressed to the Director, Strategic Defense Initiative Organization (SDIO) and the Chairman, SDIAC with copies furnished to the SDIO Chief Scientist and myself. The SDIO Director, Support Services is responsible for processing all personnel actions within SDIO including consultant appointments. Due to the backlog resulting from staff shortages in Support Services, the SDIO Chief Scientist undertook responsibility for obtaining financial disclosures and execution of disqualification statements from consultants requiring appointment to serve on the SDIAC. Responsibility has now been reassumed by the SDIO Director, Support Services. I review the financial disclosure statements and disqualifications prior to the requests for appointment being sent from SDIO to the Deputy Assistant Secretary of Defense (Administration) (DASD(A)).

2. There appear to be several reasons for the different approaches to establishment of the SDI Advisory Committee and the award of a contract for a review of SDI battle management. It is my understanding that after the President's March, 1983 speech announcing the initiative, studies

were conducted by the Office of the Secretary of Defense (OSD) on strategic implications and technologies that should be pursued to make a determination of the feasibility of developing a ballistic missile defense system. The studies were begun in July, 1983 and completed in October 1983. It appears that organizational efforts were also undertaken by the OSD staff during that year and, in April 1984, the Secretary of Defense issued an interim charter for the Strategic Defense Initiative Organization. Although the charter was issued and Lieutenant General Abrahamson was appointed Director, the agency was only a small cadre of approximately 11 personnel, and, as organized, it was still in many respects functioning as part of the OSD staff. The Director and his immediate staff were located in the Pentagon.

The staff developed an internal organization plan and began to obtain personnel and other resources to manage a variety of technology research efforts and system architecture studies. Given the unprecedented technological scope of the program, its multi-billion dollars spending plan for the coming five years, and overall importance to national security, establishment of an advisory committee to obtain advice and assessments from the nation's top technology, policy and strategy experts was included as part of the initial organizing efforts. Just as the small cadre assigned to the SDIO was working along with the OSD staff to form a new agency, it worked along with the OSD staff, including the DASD (Administration) and DoD Office of General Counsel to establish the SDI Advisory Committee. This internal DoD preparation led to the sending of a consultation letter from the Deputy Assistant Secretary of Defense (Administration) to the Government Services Administration (GSA) on July 30, 1984. As stated in my testimony, GSA concurrence was received approximately five months later on December 28, 1984.

It is also my understanding that in July, 1984, as the SDIO began to obtain technical personnel, that staff was assigned to government-leased space outside the Pentagon. Most of the personnel in the new organization remained located at the government-leased space until April, 1987, when the entire SDIO was moved into the Pentagon. Although the new organization began with some administrative support staff it did not have internal contracting or legal support prior to October, 1985.

The SDI Organization included a Directorate for Programs and Systems. Among the responsibilities of this staff directorate was research in the areas of command, control and communications. Officers assigned to this Staff Directorate were involved in the establishment of the SDIO Panel on Computing in Support of Battle Management.

My testimony on the award of the U.S. Air Force Office of Scientific Research (AFOSR) with the University of Maryland was drawn from a report compiled in the spring of 1986 for submission to the U.S. General Accounting Office (GAO). On March 14, 1986, GAO Assistant General Counsel, Robert Higgens wrote to SDIO regarding a letter that GAO had received from Congressman Robert J. Mrazek concerning the "SDIO Panel on Computing in Support of Battle Management". The letter stated:

> " The question is whether membership on this Panel is a personal services contract which has been improperly used to circumvent the pay limitations on experts and consultants"....

To address the issue raised by GAO, I interviewed one of the SDIO staff officers who had been involved in establishing the requirement for a review of battle management issues. I did not interview other members of the SDIO Directorate for Programs and Systems nor SDIO personnel assigned to other functions. Similarly, I did not ask the SDIO staff officer if he had given any consideration to consulting with the DASD (Administration) or personnel in any other OSD staff office. Most of the information that I obtained from the SDIO staff officer pertained to the technical requirement. With respect to the contract, he deferred to the AFOSR. In my judgment at the time, I believed I had enough information to proceed by reviewing the contract in question.

In reviewing the contract file at AFOSR, I noted that the contract had been determined by AFOSR to be nonpersonal services in nature and that the pricing had been determined appropriate after review by management levels above the contracting officer. At the time of these reviews, the contract had also been completed. SDIO's reply to the GAO, concluding that the contract was not for personal services, included copies of determinations made by the AFOSR staff.

On May 2, 1988 representatives of the Office of Government Ethics (OGE) met with me in connection with the review requested by the Committee. I have provided the OGE representatives with SDIO's reply to the GAO's letter of March 14, 1986, including all enclosures, and will continue to work with the OGE representatives as they deem necessary.

3. With respect to the National Test Bed Ad Hoc Advisory Group, I discussed the interpretation of the Federal Advisory Committee Act, as implemented by the GSA regulations, with the GSA Committee Management Secretariat prior to the Hearing. Before that I had not consulted with the Secretariat or the Deputy Assistant Secretary of Defense (Administration). I believe the review by GSA will include an opportunity to discuss this interpretation.

4. As stated in my testimony, the SDIO Panel on Computing in Support of Battle Management began in June, 1985. The panel's meetings were held during the summer of 1985. My assignment to the SDI Organization began in October 1985.

The AFOSR contract with the University of Maryland contained a Conflicts of Interest provision requiring panel members to certify as follows:

> "I certify that I am not an employee of nor have any financial interest in the source of the proposals, reports or papers which I have evaluated on this panel. I also certify that I have not used and will not use these proposals for any purpose other than evaluation and have not reproduced, duplicated or disclosed, in whole or part, these proposals for any purpose."

Subsequent to completion of the AFOSR contract with the University of Maryland, we determined that it would be appropriate for ANSER Corporation, the contractor providing Systems Engineering and Technical Assistance support to the SDIO Systems Office, to use members of the panel assembled under the University of Maryland contract among their consultants. Prior to SDIO's execution of that contract task, I reviewed ANSER's requirement for consultants to submit a statement of affiliations and refrain from any use of their position that is, or could appear to be for private gain for themselves.

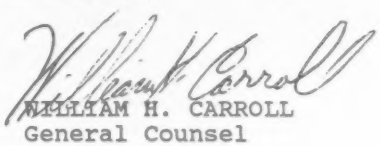
As further stated in my testimony, during review of the AFOSR contract for purposes of responding to the General Accounting Office's March 14, 1986 letter, we learned that the certifications required under the conflicts clause had

not been obtained. We have no indication that any of the panel members had any financial interest in any of the Phase I contractors or that they used the Phase I contracts under review for purposes other than evaluation.

As noted above, we have provided files related to these contracts to the Office of Government Ethics, and will, of course, be guided by any findings and recommendations that they may make.

I trust the opportunity to exchange views during the reviews requested by the Committee will assist us in determining whether a proposal to have a study or review performed by a contractor is an advisory committee.

Sincerely,



WILLIAM H. CARROLL
General Counsel

Obtaining Scientific Advice for Government

Testimony before the United States Senate Committee on Governmental Affairs
April 19, 1988

Professor David Lorge Parnas
Department of Computer and Information Science
Queen's University, Kingston, Ontario

Who am I and what will I discuss?

I am a computer scientist specializing in software engineering. I have published more than 100 papers on computer system design; many of them widely cited, reprinted and translated. I provided scientific advice to the Department of Defense between 1972 and 1986, both indirectly as a consultant to several defense contractors, and directly as a part-time and intermittent employee of the Department of the Navy. In addition, early in May 1985, I was invited to join the SDIO Panel on Computing in Support of Battle Management (which later named itself "The Eastport Group"); I resigned at the end of June. I resigned my Navy appointment in January of 1987.

I have been asked to describe my experience on the Eastport Panel. At issue is the question of whether such panels provide scientific advice that is unbiased, accurate and useful. My testimony will address the following questions:

(1) How was the Eastport Panel formed?

(2) What was done about conflict of interest?

(3) What were the financial arrangements?

(4) What information was given to the panel?

(5) What did the panel produce?

(6) Why is the U.S. government dependent on panels of this sort?

(7) What can be done to improve the situation?

(1) HOW WAS THE EASTPORT PANEL FORMED?

How I was Appointed to the Panel

A telephone call from David Mizell, then an employee of the Office of Naval Research (ONR), offered me a chance to "save the world from nuclear conflagration" and be paid $1000 per day. He told me that SDIO, with ONR's assistance was forming a panel, to meet 18 days during the summer and provide advice on the spending of large amounts of money for computer related research. Further, details would be available from Richard Lau, another ONR employee.

Discussions with Dr. Lau revealed the names of other panel members and confirmed the rate of payment.

I reminded ONR that I was an employee (part-time) of the Naval Research Laboratory (NRL) and suggested that I should do this work in that capacity. ONR appeared uninterested in that arrangement. Dr. Lau stated that NRL had nothing to do with this effort and seemed annoyed at the suggestion that they should be involved.

Confirmation of my membership and the panel's meeting schedule was made by James Offut of SDIO in a letter dated 5 June 1985. This letter did not mention compensation or expense reimbursement. Dr. Lau assured me that his personal word was enough.

The Makeup of the Panel

Early in the discussions, I asked the names of other participants. The answer so surprised me that I responded with, "How did you chose those people". None of the people that I would have selected were included. Many of those chosen did not have the experience or research interests that I considered appropriate. Dr. Lau replied by stating that they were all people that he knew well and had worked with before. He emphasized that he was sure that he could trust them.

No member of the Eastport Panel would be considered a leading figure in Computing Science. None has an outstanding publication record. As far as I can ascertain, none of the original members had participated in the construction of weapon delivery systems or the like. Dr. Vyssotsky, who joined the panel long after I left, was among those I would have selected originally. He has a great deal of highly relevant experience.

(2) WHAT WAS DONE ABOUT CONFLICT OF INTEREST?

Discussion before the meeting

Before the panel met, I called Dr. Lau to inform him that conflict of interest might prevent me from serving. I was the principal scientist in a project (at NRL) doing work that I consider relevant to SDI. The panel might recommend that the NRL work be funded by SDIO. Dr. Lau stated that this was not a problem. "Everyone on the panel", he said "had that kind of conflict." "If you weren't doing work of relevance to SDI, why would we want you on the panel?" After making certain that responsible officials at both NRL and ONR were fully informed, I joined the panel.

No, other discussion of conflict of interest took place and I received no advice on the problem from SDIO or ONR. NRL was, quite properly, concerned. ONR was unable to provide administrative information that NRL considered necessary to make a final, authoritative determination. NRL wanted to know exactly how payment would be made. ONR had not yet determined that.

Panel Members serving without pay

One panel member informed me that he was not accepting compensation for his participation. He indicated that he was employed by a defense contractor who sent him to Washington looking for contracts. Participating in this panel was a way to do that. While it is admirable to refuse double compensation, the conflict of interest in such cases is very real.

Presentations by the Panel Members

As the meeting continued, individual panel members began to present proposals for SDIO funding. In several cases, it was clear that the presenter was doing, or wanted to do, work along those lines. The presentations were superficial, the type presented to funding officials rather than fellow scientists.

When I was asked to present proposals for SDIO funding, I responded that I was not prepared to present proposals until I had a better idea of the problem. An ANSER employee, Walt Brothers, then suggested that I describe the work that I was doing.

That session, and subsequent public statements by the panel chairman, made it apparent that the panelists did not distinguish between their role as advisors to SDIO and their role as researchers seeking funding.

Contrast with Other Experience

NRL takes the problem of conflict of interest very seriously. Even though I was only a part-time advisor, I had to read the regulations yearly, attend briefings on the problem, etc. My outside employment was carefully reviewed on at least two occasions to make sure that there were no conflicts.

As a consultant for defense contractors, I was always asked to declare that I had no conflict of interest or similar problem. The contractors differ considerably in the amount of influence their lawyers have, but all make sure that the consultant is aware of the problem. One contractor insisted that NRL approve their hiring me before they would use my services.

SDIO's lack of concern about the problem came as a great surprise to me.

(3) WHAT WERE THE FINANCIAL ARRANGEMENTS?

Financial Discussions Before the Meeting

Before the meeting, I asked both ONR employees to explain the mechanism that would be used to pay the panel members. NRL had frequently told me that the payment of such high fees was a violation of Federal Law. Much as I like to be well paid, I did not want to violate any law. Further, NRL told me that the payment mechanism could determine whether or not my participation was permissible. The ONR people mentioned several possibilities for payment including, direct payment with a government check, or payment by a "beltway bandit". They did not know which method would be used. Later I was told that the Air Force Office of Scientific Research (AFOSR) would make the payment.

Financial Discussions After the Meeting

At the end of the first meeting, I asked where the expense accounts should be sent and was told to send them to one of the SDIO officers. When I received no response to my billing, I inquired about the delay. I was told, repeatedly, that there were difficulties in setting up the contract but that I would be paid. Dr. Mizell made scathing remarks about "green eyeshade people" who insisted on following procurement regulations. Apparently, SDIO/ONR/AFOSR had wanted to give a sole source contract to the University of Maryland, but was forced, because of the size of the contract, to open the bidding.

It is important to note that the panel members were selected and had begun their discussions long before the contract was in place. Payment conditions were the result of an informal agreement with two government employees. The contractor did not select the panelists, direct them, or determine the rate of pay.

Relation of the Panel to the University of Maryland

My expenses, plus a fee for the first panel meeting, were eventually paid by a check from the University of Maryland. That was my only contact with them. I was told that the University won a competitive procurement; I have trouble understanding what that means if the work was being done before the contract was in place.

Contrast with Other Experience

In all my other consulting experiences, there has been a written contract before any work was done. At NRL, civil service forms were completed and a rate of pay was determined by regulations, not by the whim of individuals. At the defense contractors, company administrators completed the contract forms and the rate of pay was compared with payment to other consultants with similar experience and ability. In no situation could a single employee make binding arrangements without approval. In no situation was the work done before approval was obtained.

(4) WHAT INFORMATION WAS GIVEN TO THE PANEL?

Instructions to the Panel

The original phone calls and the SDIO letter expressed a simple goal, we were to "make recommendations for a research and technology development program" and "...to keep in mind ... that large programs are possible". There was no mention of evaluation of contractor designs.

Subsequent Statements about Instructions to the Panel

In correspondence with the General Accounting Office (GAO), I learned that SDIO informed the GAO that the panel had been instructed to evaluate the architectures proposed by the initial contractors. Neither the 1985 nor the 1986 Eastport report contains an accurate evaluation.

Information Presented to the Panel at the First Meeting

The first meeting was held at the offices of ANSER on June 10 1985. It was attended by the panel members, some ONR employees, and two ANSER employees.

In spite of the high rate of pay of the panelists, there seemed to have been little preparation for the first meeting. The panel should have been given a detailed briefing on the problem and the proposed approaches. Without such information, panels can only speak in generalities and cannot make suggestions specific to the problems at hand. There should have been advance reading material. There should have been detailed technical briefings by scientists. Instead, we received briefings by two military officers at a level appropriate for lay public, not scientific advisors. In one case, it appeared that the officer was reading slides that he had not seen before. He stopped several times to ask an ANSER employee about the next slide.

After these presentations, I pointed out our need for real technical descriptions of the architectural plans. The organizers then began a search for someone who could provide such a briefing and reported back that nobody was available for this meeting. Instead, we were given a description of some superficial (badly flawed) simulations.

I received the impression that the panel was not important to SDIO. Subsequent events have strengthened that impression.

Discussion of Consultant Suggestions

The interplay between an academic who has time to think deeply about generalities, and practitioners aware of the exigencies of current problems, leads to a sharpening of ideas and benefits for both sides. At the first meeting there was no such interaction. The discussions remained on a superficial level because the system designers were not represented. The interaction that is essential to successful consultation was missing. My impression is that the Eastport Panel has confined its interactions to Technocrats and Military Officers in SDIO and has not had much contact with the contractor engineers who know the real problems. Both the 1985 and 1986 Eastport Panel reports evidence lack of contact with reality.

(5) WHAT DID THE PANEL PRODUCE?

The 1985 Eastport Report

The 1985 Eastport Report was highly critical of the Phase I work of SDIO. In fact, it suggested that the work be redone. If the SDIO and its panelists had been as naive as Eastport Report suggests, any objective observer would have to conclude that SDIO and its contractors were incompetent. The information that I have been able to obtain from those who have read the contractor reports, suggest that the Eastport descriptions of their work were not accurate. The Phase I contractors knew much more about the job than the Eastport panelists.

Many of the remarks in the Eastport Report struck me as veiled proposals of work for its members and friends. For example,

> "The panel recommends also that SDIO build an "SDInet" to serve as a proving grounds for the distributed systems architecture of the strategic defense system and for its communications protocols. The SDInet will support interoperability of architecture work, battle management development and simulation facilities. The SDInet will also support resource sharing among the SDI contractors."

This recommendation makes no sense because,

(1) We have had an adequate computer communication network (ARPAnet) connecting DoD contractors for many years. The original purpose of the ARPAnet, long forgotten, was to support resource sharing among DoD contractors. There is always room for improvement in such networks, but there is no need for a separate, general purpose, network for SDIO. Very specific high bandwidth connections might be needed to meet the requirements of special projects but there is no evidence that that is what Eastport had in mind.

(2) A ground based network is not of much use in evaluating communication protocols for space based communications. Ground based communication protocols can assume transmission delay times that are small and fixed. Space based communication protocols are designed for lengthy, variable, communication delays.

(3) A network intended to support communication among contractors cannot be simultaneously used as an experimental "proving ground". Unreliable networks are not helpful and will not be used. Proving grounds are usually unreliable.

As I knew that the panel chairman and his employer were deeply involved with maintenance of the ARPAnet, it came as no surprise when I was later told that the SDInet contract had been given to them. A second panel member, who as an ONR employee had helped to organize the panel, now works for the same employer.

Space permits the discussion of only one example, but there were many others in the report.

The 1986 Eastport Report

The 1986 report of the Eastport Study Group is not a report in the usual sense. It is a collection of contributions by individual members, including overhead foils from various presentations. It also includes sketchy minutes of some of the group meetings. Each of the contributions, except the foils and the minutes, is prefaced by a denial that reads, "The Eastport Study Group neither endorsed nor disagreed with [what follows]". There are no conclusions of recommendations by the group as a whole. Three of the members seem to feel that Phase I of the National Test Bed (NTB) effort was not productive; the others are silent on that topic. There are some vague suggestions about alternatives to current NTB plans but I found nothing concrete.

The 1986 report represents a formal or "paper" deliverable. There is no sign of any real or intellectual deliverable. The best working paper in the collection describes itself as "mutterings". The runner-up describes itself as "just a 'strawman' suggestion of a way to proceed; ...the product of a few

minutes of less than the best quality thinking". Those descriptions are accurate. The report contains no useful advice to the government.

Both reports ramble. It is clear that the purpose of the panel was never clearly delineated and the panel has been regurgitating general system design philosophy rather than responding to a specific problem. I am confident that if anonymous reviews of these reports were obtained, the reviewers would not find any contribution to our understanding of the problems being treated. The generalities are not new, and often naive; there are no specific suggestions.

(6) WHY IS THE U.S. GOVERNMENT DEPENDENT ON PANELS OF THIS SORT?

The U.S. government appears to be more dependent on advisory committees of non-employees than many much smaller organizations. As a Government employee, I found it very hard to hire scientists directly. Agencies are often forced to "hire" scientists through contractors for four reasons,

(1) Compensation of scientists is inequitable,

Under current policies, it is difficult for government agencies to hire good scientists directly. The government is willing to pay far more for the services of a scientist who works for a contractor than it would pay for the same person in government service. Defense contractors commonly pay as much as 50% more than government laboratories. Regulations do not allow government agencies to be competitive. Since, in the final analysis, the government pays the cost either way, I have never found a rationale for the current situation.

Contractor employees are consistently better supported than their government colleagues. This extends to working conditions, technical support, equipment, and travel conditions.

Very few scientists are sufficiently dedicated to remain in government service when they can be paid more and have better support for their work by working for defense contractors or universities. I have had the pleasure of working with such people, but they are rare. Scientists should not have to make personal sacrifices to work directly for their government.

(2) Government consulting rules are unrealistic,

The regulations under which I served the U.S. government did not allow a consultant to be paid more than he would get, on a daily basis, as a full-time employee. Not only is this uncompetitive, it is unreasonable. Consulting is inconvenient and the customer gets the benefit of years of study by paying for just a few days. The customer does not pay for the professional development of a consultant as it does for a long-term employee. Consulting rates should be higher than those for full-time employment.

I think that the rates paid by SDIO to the Eastport Panel were excessive, but the rates paid under civil service rules are too low.

(3) Government scientists are not encouraged to do technical work,

Government laboratories do not provide adequate administrative support to their scientists. Further, most government laboratory employees spend a great deal of time seeking project funding. Promotions are available to scientists who shoulder administrative burden, not those who stay in their laboratories. There is so much red-tape for the government scientist, that many quit in sheer frustration. They want to practice their profession, not push forms through a bureaucracy.

(4) Conflict of interest rules do not differentiate between full-time employees and consultants.

I have found no section of the Navy conflict of interest regulations that recognizes that one may be employed on a part-time basis. Strictly speaking, a consultant who works 10 days a year for the government has to ask Navy approval for the full-time University post he has held for years.

(7) WHAT CAN BE DONE TO IMPROVE THE SITUATION?

During my 14 years as a Defense Consultant, the present system worried me. I will take this opportunity to summarize my suggestions.

1. All government advisors should be government employees appointed using civil service procedures. The government should not make contracts with corporations or universities for personal services.

   The Office of Personnel Management should develop a mechanism to evaluate or "grade" "experts". Civil Service "grades" and standards are needed to insure uniformity of evaluations and to avoid "cronyism". It should not be possible for a civil servant to call up a scientist and negotiate a pay rate without review. Regulations should set pay rates in accordance with the consultant's experience and achievements.

   Occasionally, the only people with the requisite expertise will be employees of government contractors. Even in those cases, the consultant should be hired and paid by the government instead of his regular employer. When an employee's services are donated by the corporation or University that employs him, his dual responsibilities may conflict. I am told that some members of the Eastport Panel did not accept payment because they felt that participation was part of their normal duties for their employer. While that is admirable, it only emphasizes their conflict of interest. It gives the panel member an excuse for making recommendations that might not be the best ones for the government.

2. Government should try to support some truly first-rate scientists as full-time active researchers. I believe that the government needs the services of scientists who do not have loyalties and responsibilities to other organizations. There should be positions at government laboratories that are paid competitively, and supported as well as industry positions. There should be high status associated with these positions; top scientists should be recruited for them. Hiring scientists directly should not cost more than hiring them through another organization; direct employees have fewer interest conflicts. Because of industrial funding of government laboratories such conflicts still exist.

3. Contractor scientists and engineers should be evaluated using the same grading standards that are applied to government scientists. If a contractor pays scientists more than their civil service rate, the excess should not be treated as a cost that can be charged against government contracts. This would not restrict contractor's right to determine their own pay scales, only what the government pays. The government would not be competing unfairly with itself.

4. All scientific advisory committees should include full-time government scientists who are actively involved in research or development related to the issues being discussed.

5. There should be a separate set of conflict of interest instructions for those who are only occasional or part-time advisors to the government.

6. Government advisory panels should not meet until the questions to be answered are fully formulated. The final reports should include both agreed statements and individual "minority" opinions on the stated questions.

7. Government advisory panels should represent all known scientific views. Under the present system it is easy for a bureaucrat to hire experts that will say what he wants them to say. That will always be possible, but it need not be easy.

8. When a committee of experts has been formed and they issue a report, the congress (using Office of Technology Assessment and GAO experts) should make an independent review for quality control purposes.

David Parnas

JOHN GLENN, OHIO, CHAIRMAN
LAWTON CHILES, FLORIDA
SAM NUNN, GEORGIA
CARL LEVIN, MICHIGAN
JIM SASSER, TENNESSEE
DAVID PRYOR, ARKANSAS
GEORGE J. MITCHELL, MAINE
JEFF BINGAMAN, NEW MEXICO
WILLIAM V. ROTH, JR., DELAWARE
TED STEVENS, ALASKA
WILLIAM S. COHEN, MAINE
WARREN B. RUDMAN, NEW HAMPSHIRE
JOHN HEINZ, PENNSYLVANIA
PAUL S. TRIBLE, JR., VIRGINIA
LEONARD WEISS, STAFF DIRECTOR
JO ANNE BARNHART, MINORITY STAFF DIRECTOR

United States Senate
COMMITTEE ON
GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510-6250

April 22, 1988

Dr. David Parnas
Department of Computing and Information Science
Queen's University
Kingston, Ontario K7L 3N6
Canada

Dear Dr. Parnas:

Thank you for appearing at our hearing on DOD and SDIO compliance with the Federal Advisory Committee Act on April 19. The Committee appreciates your contribution to the hearing, both in your prepared testimony and in the subsequent question and answer period.

In order to ensure as complete and detailed a hearing record as possible I would like to ask you to reply, in writing, to the following questions. I would hope that you could reply as soon as possible.

1. To your knowledge, have you ever served on an advisory committee covered by the Federal Advisory Committee Act? If so, please compare the experience with your Eastport Group experience.

2. At the time you were selected, was it your understanding that the Eastport Group would be reporting directly to SDIO on its recommendations for a research and technology development program?

3. Do you think the University of Maryland provided anything other than administrative support to the Eastport Group?

4. Your testimony states that in your experience with other DOD contractors, you were always made aware of their concerns with conflicts of interest. How was this accomplished?

I look forward to your reply.

Best wishes.

Sincerely,

John Glenn
Chairman

JG/ael

DEPARTMENT OF COMPUTING
AND INFORMATION SCIENCE
Phone # (613) 545-6050
Fax # (613) 545-6513

Queen's University
Kingston, Canada
K7L 3N6

May 19, 1988

BY COURIER

Senator John Glenn
United States Senate
Committee on Governmental Affairs
Washington, D.C. 20510-6250
U.S.A.

Dear Senator Glenn:

Thank you for your letter of 28th April which I received today after a lengthy trip.

Below the answers to your four questions.

1) Except for the Eastport group, I have always provided advice either as an employee of the DoD or as an employee of a consultant to a contractor of the DoD. I do not believe that such service would fall under the FACA.

2) When I was selected for the panel known as "Eastport Group", it was my understanding that we would be reporting directly to SDIO. The letter appointing us came from SDIO and no other means of reporting was mentioned.

3) I do not believe that the University of Maryland provided anything other than administrative support to the Eastport Group. My only contact with them was to receive a check. Even the telephone call asking for my taxpayer identification number came from Dick Lau of ONR. Thus ONR provides administration support to the university.

In my conversations with David Mizell after resigning from Eastport, the only mention made of the University of Maryland was as a funding conduit.

4) In Government service, I was always asked to list any potential conflicts of interest and to declare that I had no agreements with other parties that might be in conflict. When I was employed by IBM Federal Systems Division, they asked for a statement by U.S. Navy officials that there was no objection to their use of my services.

I hope that I have answered your questions and will be happy to provide further information if needed.

Yours truly,

David L. Parnas
Professor

DLP:fm

United States General Accounting Office

GAO Testimony

For Release
on Delivery
Expected at
2:00 P.M. EST
Tuesday
April 19, 1988

DOD Compliance With The Federal Advisory Committee Act

Statement
Rosslyn S. Kleeman
Senior Associate Director
General Government Division

Before the
Committee on Governmental Affairs
United States Senate

GAO/T-GGD-88-31

GAO Form 160 (12/87)

DOD COMPLIANCE WITH THE FEDERAL ADVISORY COMMITTEE ACT

Summary Statement by
Rosslyn S. Kleeman
Senior Associate Director

The General Accounting Office and other organizations earlier made many recommendations to ensure that DOD complies with the Federal Advisory Committee Act. DOD has taken many of the steps recommended. We believe DOD is generally complying with the act. However, some key steps still have not been implemented and should be. Specifically, the advisory committees need to document the reasons why individuals were selected for advisory committees and panels in order to demonstrate how they went about achieving the balanced membership required in the act. We believe they could use guidance in making selections to achieve balance. Also, there is a need to:

-- Document reviews of financial disclosure statements made when advisory committee members are assigned to panels.

-- Regularly review the committees' operations and assure that when deficiencies are noted, they are reported and corrected.

The Navy implemented our recommendation that it appoint committee members as special government employees, rather than considering them grantee employees. The members are now subject to the same conflict of interest standards and other requirements as other DOD panel members.

Mr. Chairman and Members of the Committee:

I am pleased to be here today to discuss the Federal Advisory Committee Act as it relates to senior scientific advisory committees in the Department of Defense (DOD). As you requested, my comments will primarily cover the extent to which DOD has implemented recommendations we and others have made on the management and operations of these committees. We identified 5 reports containing 34 recommendations issued by our office, the DOD Inspector General, and the House Committee on Government Operations. (See Attachment I.)

DOD has implemented many of the recommendations we and the other organizations made and we believe DOD is generally complying with the act. However, some key recommendations still have not been implemented but should be.

The act prescribes guidance for the establishment, operation, administration, and termination of federal advisory committees. Among other things, it requires the membership of each committee and panel to be balanced as to the points of view represented and the functions to be performed; a federal official to be designated as committee management officer; meetings to be announced in the Federal Register; and, detailed minutes of each committee meeting to be prepared.

DOD has four senior scientific advisory committees (the Defense Science Board, the Army Science Board, the Air Force Scientific Advisory Board, and the Naval Research Advisory Committee) to provide advice on matters ranging from broad policy issues to specific recommendations on particular technical problems. The committees do their work primarily through panels made up of committee members and others, each performing a specific task or study.

I will summarize our findings on DOD actions in four areas that the Committee identified as being of special interest. The areas are balancing panel membership, screening conflicts of interest, providing DOD oversight and guidance, and assuring compliance of the Naval Research Advisory Committee.

BALANCING PANEL MEMBERSHIP

The act requires balanced membership on advisory committees. We earlier recommended that the Secretary of Defense require the services to document the steps for selecting individuals for panels to help achieve balanced panel membership. The DOD Inspector General recommended that the potential panel membership base for the Defense Science Board be broadened and that the reasons for individuals' selection as panel members be documented. Also, the House Government Operations Committee recommended that the nominees for panels, their qualifications,

selectees, and selection criteria be published in the Federal Register.

The advisory committees, we have since found, generally documented the process followed in making selections, but did not cite the specific reason(s) for selecting individuals for panel assignments. The Defense Science Board did adopt the Inspector General's recommendation that it request names of additional candidates from independent scientific and professional organizations, such as the National Academy of Science, to broaden the base of potential panel membership. DOD did not agree that public dissemination of the names of nominees and selectees, their qualifications, and selection criteria would be beneficial but rather believed that this could discourage potentially valuable individuals from serving on panels.

The Inspector General and the Government Operations Committee cited the need for clear guidance for achieving balance on the advisory committees. The "balance" of membership which advisory committees must achieve is not specifically defined in the act or in GSA's implementing regulations and there is limited case law on the subject. DOD directives do not define the term, and none of the advisory committees have written criteria for achieving balance in panel membership.

Advisory committee officials said that, while they consider a variety of factors in attempting to achieve balance in terms of points of view and functions to be performed, expertise is the primary consideration. A Defense Science Board official said the Board considers an individual's discipline, background, sex, and geographic location. We were told that the Army tries to maintain a proper mix of expertise, race, and sex among members. The Air Force told us it tries to balance membership through a mix of individuals from consulting organizations, laboratories, universities, and large and small companies; and it considers sex, minority status, ethnic background, and geographic location of potential members to be of secondary importance. The Navy said it tries to achieve balance among computer science and underwater acoustics disciplines, and among individuals with industry and academic backgrounds.

We recognize the difficulty of defining the term balance as envisioned in the act and determining whether in a given case balance has been achieved. We believe, nonetheless, that the DOD advisory committees could use guidance which, at a minimum, indicates the kinds of factors that should be considered in selecting committee and panel members and requires that the reasons for the selections be documented.

SCREENING FOR CONFLICTS OF INTEREST

DOD and the services require each individual nominated to serve on scientific advisory committees and panels to submit a "Confidential Statement of Affiliations and Financial Interests." Persons determined to have actual or potential conflicts of interest must either (1) disqualify themselves from considering any matters relating to these interests, (2) divest themselves of the interests, or (3) accept reassignment to positions that do not create conflict. Also, if a potential conflict is determined not to be substantial, the individual may be granted an exemption under the conflict of interest law and allowed to participate in matters affecting the interest.

The reports of the DOD Inspector General and Government Operations Committee noted that financial statements were not always obtained, completed or properly processed by the Defense Science Board and that conflict of interest reviews were not adequately conducted. Also, the services' procedures for reviewing committee members' statements did not require that decisions on actual or potential conflicts of interest be documented.

Therefore, these organizations recommended that new guidelines be issued, statements be collected before panels meet, statements be appropriately reviewed, and the results of the reviews be

documented before assigning members to panels. DOD agreed with these recommendations.

We found in February-March 1988 no widespread departure from DOD's procedures requiring reviews to be documented when members were first selected for a committee and annually thereafter. However, when the committee members were assigned to panels, the Defense Science Board did not often have available new statements submitted by prospective panelists, as is its policy, and the Air Force Scientific Advisory Board did not document its reviews of updated statements in light of the new duties panelists would be assuming. We could not in these instances substantiate that a review of panelists' financial interests in light of their new duties was made or that any actual conflict or potential conflicts of interest were identified and resolved.

Under Defense Science Board procedures, members submit a new disclosure statement when they are assigned to a panel and the Board's Executive Director and its Office of General Counsel are to review and approve each statement. During our 1988 review, DOD could not provide new statements for 14 of the 23 panel members assigned to the two panels we reviewed. Therefore, we could not tell whether these panel members' financial interests had been reviewed and approved before the first panel meetings.

Under Air Force Scientific Advisory Board procedures, members are to update their disclosure statements when they are assigned to a panel. The Executive Director and the Office of the Judge Advocate General are to review and approve the updated statements. Although updated statements were required from the 25 members on two panels, we found no documentation to show that the updated information was reviewed in light of the panelists' new duties.

With respect to resolution of conflicts of interests, the advisory committees use similar procedures to document the type of action taken to resolve a conflict. Reviewing officials are required to check a box on the disclosure form to indicate how a conflict was resolved, such as by disqualification. We found that the process of granting an exemption for insubstantial conflicts was used very infrequently.

All committees had procedures for informing panel members of their responsibilities to avoid conflicts of interest. Advisory committees provided handouts and briefings to members on avoiding and resolving conflicts of interest. The briefings were given by the Office of General Counsel and usually took place at full Board meetings or at the panels' first meetings. Members were given written statements admonishing them to avoid participation in matters affecting their financial interests. However, only the statements issued by the Naval Research

Advisory Committee were tailored to individual members' particular interests.

The Defense Science Board initiated a procedure in 1984 whereby the panel chairman and the Board's Executive Secretary and Executive Director, in consultation with the ethics counselor, are required to review proposed panel topics to identify those on which it may be difficult to obtain disinterested advice. When such topics are identified, a special plan for dealing with potential conflicts must be included in the panel's study agenda. A Board official said that only one such plan had been necessary.

PROVIDING DOD OVERSIGHT AND GUIDANCE

The Inspector General recommended in 1983 that the Assistant Secretary of Defense (Comptroller) perform periodic checks of Defense Science Board operations to ensure compliance with the act. The Deputy Assistant Secretary of Defense (Administration) responded that he would periodically review the Board's operations, and said he intended to review, at least once every 3 years, the records of all DOD advisory committees.

In calendar year 1984, the Deputy Assistant Secretary reviewed 25 selected advisory committees and panels, but the number has dropped each year since to 17 in 1985, 8 in 1986, and 6 in 1987.

A listing of the reviews is provided in Attachment II to my statement. No reviews have been made thus far in 1988. DOD does not have a plan showing which advisory committee and panels will be reviewed in the future.

In the reviews, performed by the Deputy Assistant Secretary, findings were communicated orally to the responsible advisory committee or panel officials. We were told that, if recurring problems were found, a memorandum was usually sent to the committee. A one-page memorandum was also prepared "for the record" showing what the review disclosed and sometimes indicating that a recommendation had been made to the responsible committee or panel official.

DOD records indicate that each of the four senior scientific advisory committees was reviewed at least once during 1985-87, and DOD found areas requiring each committee's attention, including recurring problems at the Army Science Board and Naval Research Advisory Committee. At the Army Science Board, decisions to close meetings to the public had not been approved at a higher level as required; and, at the Naval Research Advisory Committee, decisions to close meetings were not made 30 days before the meeting dates as required by regulations at that time. The DOD official responsible for the reviews could not produce any memorandums indicating that the committees had been informed of these findings.

We believe that the Deputy Assistant Secretary needs to regularly review the advisory committees' operations and to ensure that any deficiencies noted are promptly reported and that corrective actions are taken.

ASSURING COMPLIANCE OF THE
NAVAL RESEARCH ADVISORY COMMITTEE

You expressed particular interest in the Navy's actions on our recommendations that its panel members be appointed as special government employees rather than being considered by the Navy to be employees of a grantee. As special government employees, these members would be subject to the same conflict of interest standards and the panels would be subject to the same standards of balance, independence, and openness that apply to other DOD panels.

DOD said it concurred in our recommendations and promised prompt corrective action. The Navy said it would appoint panel members as special government employees after October 1, 1983. Navy guidance now prohibits persons from participating in panel activities until they are formally appointed as special government employees.

We reviewed a number of Navy panel member appointments and found that all members were appointed as special government employees.

As such, these employees are subject to the same standards as panel members of the other services' panels.

CONCLUSIONS

In summary, we believe DOD has taken many of the steps we and the other organizations identified as necessary to improve compliance with the Federal Advisory Committee Act. However, additional steps can and should be taken to implement certain of the earlier recommendations. Specifically, the advisory committees need to document the reason(s) for selecting committee and panel members, which can help to demonstrate how they went about achieving balance, and they could use guidance for this purpose. When committee members are assigned to panels, financial disclosure reviews should be documented. Finally, the Deputy Assistant Secretary of Defense (Administration) should ensure that the advisory committees and panels are regularly reviewed and that deficiencies are corrected. In particular, DOD needs to ensure that decisions to close meetings to the public are approved as required. These actions would help assure that DOD's senior scientific advisory committees are perceived as being independent and are functioning in compliance with the act.

That concludes my remarks. I will be pleased to answer questions.

ATTACHMENT I

ATTACHMENT I

RECOMMENDATIONS OF THE DOD INSPECTOR GENERAL, GAO,
AND THE HOUSE GOVERNMENT OPERATIONS COMMITTEE
RELATING TO DOD'S COMPLIANCE WITH THE
FEDERAL ADVISORY COMMITTEE ACT

DOD INSPECTOR GENERAL REPORT:

Policies, Procedures and Practices For Operation of the Defense Science Board, (83-156, July 7, 1983).

The Inspector General recommended that the Under Secretary of Defense for Research and Engineering require the executive officer of the Defense Science Board ensure compliance with the directives requiring that:

-- each advisory committee meeting is properly announced in the Federal Register;

-- all records, reports, transcripts, minutes, or other documents utilized or generated by each task force are maintained at an appropriate central location;

-- minutes are prepared in sufficient detail to present a distinct record of task force conduct, discussions, events, actions and conclusions;

-- the designated Federal task force representative is fully aware of procedures and consequences of applicable laws, regulations and policies; and

-- task force minutes document that prior studies have been thoroughly reviewed and analyzed to determine their relevance before a new review is undertaken.

The Inspector General also recommended that the Under Secretary of Defense for Research and Engineering require the Defense Science Board's Executive Officer to speed implementation of actions recently started that should ensure that financial disclosure statements are properly prepared and filed prior to the commencement of an advisory task force, and that the conflict of interest review conducted therein, not only follow appropriate guidance, but also present a substantive examination, whereby even the appearance of a conflict of interest would be averted.

The Inspector General recommended that the Assistant Secretary of Defense (Comptroller) clearly delineate:

-- the "particular matter," with respect to financial interest, that would disqualify an individual from participating on a specific advisory committee; and

-- what "balanced representation" on an advisory committee specifically entails and criteria for determining when it has been achieved.

The Inspector General also recommended that the Assistant Secretary of Defense (Comptroller):

-- inaugurate procedures whereby periodic evaluations will be conducted of conflict of interest reviews to guarantee compliance in this area as set forth in the Public Law, OMB Circular, and DOD Directives, and

-- perform periodic checks of Defense Science Board operations to ensure compliance with the Public Law and the OMB Circular as required by DOD Directive 5105.18.

GAO REPORT:

Objectivity of DOD's Senior Scientific Advisory Committees Can Be Better Assured, (GAO/GGD-83-76, Sept. 21, 1983).

ATTACHMENT I

GAO recommended that the Secretary of Defense require the services to:

-- document the review of financial disclosure information when members are selected for specific panels,

-- document the resolution of potential conflicts of interest or the appearance of such conflicts,

-- comply with Federal Advisory Committee Act requirements on announcing meetings and preparing minutes, and

-- document the steps for selecting individuals for panels.

GAO also recommended that the Secretary of Defense require the Secretary of the Navy to:

-- appoint Naval Research Advisory Committee panel members as special government employees and make them subject to the same conflict-of-interest standards as other committee members, and

-- apply the same standards of balance, independence, and openness to the Naval Research Advisory Committee panels that apply to the advisory committee panels of the other services.

DOD INSPECTOR GENERAL FOLLOWUP REPORT:

Report on the Followup Review of Policies, Practices and Procedures For Operation of the Defense Science Board, (84-013, Nov. 16, 1983).

The Inspector General recommended that the Under Secretary of Defense for Research and Engineering:

-- improve documentation of reviews of prior studies. These reviews should be conducted before initiation of a task force, and made a matter of record in the task force's file,

-- ensure that future certifications by Task Force Executive Secretaries are executed prior to the organization of the task force,

-- broaden the base of the potential task force membership list by obtaining names of additional candidates from independent

scientific and professional organizations such as the National Academy of Scientists,

-- ensure that the reasons for individuals' selection as task force members are documented and made a matter of record in the task force's files,

-- establish stronger controls to ensure that no person receives any compensation for attendance at task force meetings that occur before all paperwork has been processed and all clearances have been granted and that any paid work outside of the task force meetings is approved and fully documented,

-- issue guidance to the Task Force Chairmen to speed up the approving of meeting minutes in accordance with Defense Science Board guidelines,

-- implement the following recommendation of the Defense Science Board's Ad Hoc Committee on Conflict of Interest:

> For those task force topics which have potential sensitivity to conflict-of-interest considerations, a plan should be prepared by the designated Task Force Chairman and assigned Staff Executive. The plan should

include the identification of sensitive issues, modification of the task force terms-of-reference, if necessary, and the process for assigning task force members. This could include seeking uncommitted experts, requiring a membership that is "balanced" insofar as practicable, or disqualifying certain members from specified aspects of the task force's work.

This plan, as well as the evaluation conducted by the Executive Officer regarding a potential task force topic's sensitivity, should be documented and made a matter of record in the task force's file, and

-- provide the necessary space required for the establishment of a central storage location for the maintenance of all task force records.

GOVERNMENT OPERATIONS COMMITTEE REPORT:

Twenty-Seventh Report by the Committee on Government Operations, (H.R. 98-580, Nov. 28, 1983).

ATTACHMENT I

ATTACHMENT I

The Government Operations Committee recommended that the Secretary of Defense:

-- Move the administrative and operational control of Defense Science Board activities from the Office of the Under Secretary of Defense for Research and Engineering to an independent office reporting to the Deputy Secretary of Defense. Similar actions should be taken regarding the military services' advisory boards.

-- Issue specific and clear-cut guidelines to preclude any appearance of conflict of interest, lack of balance, and bias in the operation of all defense advisory boards.

-- Ensure that no individual is permitted to participate in advisory studies until all legal and administrative requirements are met.

-- Prohibit any individual from participating in an advisory study who has a financial interest (direct or indirect) in the outcome unless specifically waived by the Secretary of Defense on the basis that the individual has unique qualifications necessary to meet panel objectives. Such waivers shall be included in the notice as required in the following

recommendation and should in no way infer immunity from prosecution should an actual conflict of interest develop.

-- Require that the names of individuals selected to serve on panels, and the criteria upon which the selection was based be published in the Federal Register.

-- Require that the financial statements of all nominees and all other administrative records concerning panel selections be kept on file in a central location for at least three years and upon request be made available to the House Committee on Government Operations, the Senate Committee on Governmental Affairs, and the House and Senate Committees on Appropriations and Armed Services.

-- Require that nominees for task forces and their qualifications be published in the Federal Register, and invite public comment before the final selection is made.

-- Preclude DOD employees from task force membership and active participation in the deliberations of the study groups.

-- Require the Navy to comply with provisions of the Federal Advisory Committee Act in administering its panels.

85-796 0 - 88 - 5

-- Direct that all recommendations in the GAO and IG reports be fully implemented.

GAO FOLLOWUP REPORT:

Followup Review of Department of Defense Actions to Correct Problems in the Operation of the Defense Science Board (GAO/GGD-84-49, Feb. 13, 1984).

GAO reviewed the adequacy of the Inspector General's review of DOD's corrective actions taken on his July 1983 report. GAO concluded the Inspector General's followup review adequately covered the problems identified in his earlier report. GAO's review of selected financial disclosure statements filed by Defense Science Board members revealed no apparent conficts of interest.

ATTACHMENT II

ATTACHMENT II

DOD Compliance Reviews of Advisory Committees
1984-1987

1984

3-16-84	Defense Science Board: Task Force on Fire Support for Amphibious Warfare
3-20-84	Army Science Board
3-21-84	Armed Forces Epidemiological Board
4-6-84	Defense Investigation Agency Advisory Committee
5-7-84	Army Advisory Panel on ROTC Affairs
5-22-84	Air University Board of Visitors
5-23-84	Community College of the Air Force Advisory Committee
5-23-84	Air Force ROTC Advisory Committee
6-19-84	Scientific Advisory Group on Effects
6-20-84	Naval Research Advisory Committee
6-27-84	Navy Resale Advisory Committee
7-11-84	Navy Resale Advisory Committee
7-25-84	U.S. Army Medical R&D Advisory Panel
7-30-84	Advisory Committee on the Air Force Historical Program
8-1-84	Armed Forces Institute of Pathology Scientific Advisory Board
8-20-84	Chief of Naval Operations Executive Panel
8-23-84	Air Force Scientific Advisory Board
10-9-84	Defense Science Board: Task Force on Chemical Warfare and Biological Defense
10-12-84	Defense Science Board: Task Force on Atmospheric Observation

ATTACHMENT II

10-31-84	Joint Strategic Target Planning Staff Scientific Advisory Committee
11-29-84	Defense Science Board
11-29-84	Joint Strategic Target Planning Staff Scientific Advisory Committee
12-5-84	National Security Telecommunications Advisory Committee
12-18-84	National Security Agency Advisory Board
12-18-84	Public Cryptography Advisory Committee

ATTACHMENT II

ATTACHMENT II

1985

1-16-85	Presidential National Security Telecommunications Advisory Committee
1-16-85	Defense Contract Agency Scientific Advisory Group
1-18-85	Department of Defense Wage Board
5-9-85	National Board For the Promotion of Rifle Practice
5-14-85	Chief of Naval Operations Executive Panel
5-29-85	Department of Army Historical Advisory Commission
6-10-85	Special Operations Policy Advisory Group
6-11-85	Air Force Scientific Advisory Board
6-12-85	Naval Research Advisory Committee
7-2-85	Board of Visitors, Defense Intelligence College
7-2-85	Defense Intelligence Agency Advisory Commission
7-16-85	Department of Defense University Forum
7-18-85	Army Science Board
7-22-85	Academic Advisory Board To the Superintendent, U.S. Naval Academy
9-11-85	Scientific Advisory Group On Effects
12-23-85	Defense Science Board: Task Force on Software
12-27-85	Defense Science Board: Panel on On Site Inspection Technologies

ATTACHMENT II

ATTACHMENT II

1986

5-30-86	Naval Research Advisory Committee
6-5-86	Air Force Scientific Advisory Board
6-12-86	Defense Contract Agency Scientific Advisory Group
6-12-86	Presidential National Security Telecommunications Advisory Committee
8-13-86	Chief of Naval Operations Executive Panel
8-29-86	Defense Intelligence Agency Scientific Advisory Committee
9-5-86	Army Science Board
11-25-86	Defense Science Board: Task Forces on Semiconductor Dependency, Image Recognition Systems, Low Observable Technology, Follow-on Forces Attack

ATTACHMENT II

ATTACHMENT II

1987

2-19-87	Secretary of the Navy Advisory Board on Education and Training
8-26-87	Army Science Board
9-3-87	Naval Research Advisory Committee
9-17-87	SDIO Advisory Committee
9-30-87	Board of Visitors to the Defense Language Institute
10-1-87	Board of Visitors to the Naval Post Graduate School

RESPONSES TO QUESTIONS FROM CHAIRMAN GLENN

Question 1 — At our first hearing on FACA last December, you discussed your review of the President's AIDS Commission operations and compliance with the Act. What is the current status of that review?

GAO Response — Most of our audit work at the President's Commission on AIDS is complete, and we are drafting a report on the Commission's compliance with the Federal Advisory Committee Act. As agreed with the Committee, our report will highlight the public's access to Commission records and the process used by the Commission to prepare its reports.

In addition to the requested work at the Commission, you asked that, as part of our review, we evaluate the process through which the White House identified and resolved potential conflicts of interest on the part of AIDS Commission members. In order to accomplish this objective, we requested access to the financial information submitted by Commission members which provided the basis for the White House's conflict-of-interest reviews. Our informal efforts to obtain the necessary records were unsuccessful, and therefore, we submitted a written request to the Counsel to the President for access pursuant to 31 U.S.C. § 716(b)(1). This request was made in a letter dated April 13, 1988.

Question 2 — In your recent review of DOD scientific advisory committee operations, you found that the Defense Science Board requests names of additional candidates from independent organizations to broaden the base of potential board membership. Do you believe that Congress should write this or some other such affirmative requirement into FACA to clarify what must be done by the appointing authority to achieve "balanced membership?"

GAO Response — The Federal Advisory Committee Act requires that advisory committee membership be "fairly balanced," but neither the act nor GSA's implementing regulations define the concept of balance. In the preamble to GSA's regulations issued on December 2, 1987, GSA expressed the view that the balance provisions of the act are

sufficiently broad to permit agency discretion in determining advisory committee membership.

In view of the widely divergent functions performed by advisory committees, we believe that it would not be practical to write into the act a requirement that certain groups and interests must be solicited for potential membership or represented on every advisory committee. An alternative way to impose controls on the selection of advisory committee members while at the same time preserving flexibility in the selection process would be to require agencies to document the factors they will be considering in selecting committee members in view of the specific functions to be performed by the committee. Such a documentation requirement could be built into GSA's regulations by elaborating on the existing requirement that agencies proposing to establish or use advisory committees must submit to the GSA Secretariat in their consultation letters a plan for achieving balanced committee membership.

Question 3 — It seems to me that at a minimum, the agencies should be required to establish a plan for achieving balanced viewpoints for each of its advisory committees, and that the plan should be made public so that interested parties can have something by which to judge the integrity of the appointment process. Do you see any problems with this approach?

GAO Response — We see no problems with this approach. Making public agency plans for achieving balanced membership would be consistent with one of the underlying objectives of the Federal Advisory Committee Act, which was to open the advisory committee process to public scrutiny. In this vein, section 2(b)(5) of the act states that the Congress and the public should be kept informed of various aspects of advisory committees, including committee membership.

Question 4 — Your testimony states that there are a number of possible ways for a committee member to resolve actual or potential conflicts of interest. The Committee's review indicates that the preferred method of resolution is to have the member "disqualify" himself from considering any matters

85-796 0 - 88 - 6

relating to these interests. Does that method work to ensure that members do recuse themselves?

GAO Response

We, too, found in our work at the Department of Defense and other agencies that disqualification is a common method of resolving conflicts but we do not believe it is necessarily the preferred method. The choice of method for resolving a conflict depends on the nature and extent of the particular interest.

With respect to the disqualification method, we found at the Defense Science Board that the designated federal official is responsible for reviewing all task force members' financial disclosure statements to determine if a conflict of interest arises in connection with task force activities. At another agency, we also found that the designated federal official monitored conflicts of interest.

Ultimately, it is the responsibility of each advisory committee member to recuse himself from any committee matter which may have a direct and predictable effect on a personal financial interest. The prohibition against self-dealing in 18 U.S.C. 208 applies with equal force to regular and special government employees, and an advisory committee member who does not disqualify himself from matters involving a personal financial interest makes himself vulnerable to criminal prosecution.

FOR RELEASE ON DELIVERY
EXPECTED AT 2:00 P.M.
TUESDAY, APRIL 19, 1988

STATEMENT OF PAUL T. WEISS
ASSOCIATE ADMINISTRATOR FOR ADMINISTRATION
U.S. GENERAL SERVICES ADMINISTRATION
BEFORE THE COMMITTEE ON GOVERNMENTAL AFFAIRS
OF THE SENATE OF THE UNITED STATES
ON THE FEDERAL ADVISORY COMMITTEE ACT

MR. CHAIRMAN, THANK YOU FOR THE OPPORTUNITY TO TESTIFY TODAY ON ACTIONS TAKEN BY THE GENERAL SERVICES ADMINISTRATION (GSA) TO IMPLEMENT THE FEDERAL ADVISORY COMMITTEE ACT (FACA) WITHIN THE EXECUTIVE BRANCH. ACCOMPANYING ME TODAY IS MR. JAMES L. DEAN, DIRECTOR OF THE COMMITTEE MANAGEMENT SECRETARIAT. THE SECRETARIAT, MANDATED BY SECTION 7(A) OF THE ACT, IS RESPONSIBLE FOR THE DIRECTION OF GSA'S ACTIVITIES TO PROVIDE GOVERNMENTWIDE OVERSIGHT OF ALL FEDERAL ADVISORY COMMITTEES.

SECTION 7(C) OF THE ACT PROVIDES THAT THE [SECRETARIAT] "SHALL PRESCRIBE ADMINISTRATIVE GUIDELINES AND MANAGEMENT CONTROLS APPLICABLE TO ADVISORY COMMITTEES, AND, TO THE MAXIMUM EXTENT FEASIBLE, PROVIDE ADVICE, ASSISTANCE, AND GUIDANCE TO ADVISORY COMMITTEES TO IMPROVE THEIR PERFORMANCE." SECTION 7(C) ALSO PROVIDES THAT GSA SHALL CONSULT WITH THE HEADS OF EXECUTIVE BRANCH DEPARTMENTS AND AGENCIES IN EXECUTING THIS FUNCTION.

MR. CHAIRMAN, BEFORE DETAILING THOSE ACTIONS GSA HAS TAKEN TO IMPLEMENT SECTION 7(C) OF THE ACT, IT MAY BE HELPFUL TO BRIEFLY DISCUSS OTHER REQUIREMENTS OF FACA AS THEY RELATE TO THE DEVELOPMENT OF EFFECTIVE MANAGEMENT CONTROLS.

SECTION 5 OF THE ACT PROVIDES FOR A CONTINUING SUBSTANTIVE ROLE TO BE EXERCISED BY "EACH STANDING COMMITTEE OF THE SENATE AND HOUSE OF REPRESENTATIVES..." FACA REQUIRES THAT EACH SUCH COMMITTEE "SHALL MAKE A CONTINUING REVIEW OF THE ACTIVITIES OF EACH ADVISORY COMMITTEE UNDER ITS JURISDICTION TO DETERMINE WHETHER SUCH [ADVISORY COMMITTEES] SHOULD BE ABOLISHED OR MERGED WITH ANY OTHER ADVISORY COMMITTEE, WHETHER THE RESPONSIBILITIES OF SUCH [ADVISORY COMMITTEES] SHOULD BE REVISED, AND WHETHER SUCH [ADVISORY COMMITTEES PERFORM] A NECESSARY FUNCTION NOT ALREADY PERFORMED." BASED UPON THESE REVIEWS, EACH STANDING COMMITTEE IS REQUIRED TO TAKE APPROPRIATE ACTIONS TO IMPLEMENT ITS FINDINGS.

SECTION 5(B) OF THE ACT OUTLINES A NUMBER OF REQUIREMENTS TO BE FOLLOWED BY CONGRESS IN CREATING FEDERAL ADVISORY COMMITTEES. SECTION 5(C) EXTENDS THESE REQUIREMENTS TO THE EXECUTIVE BRANCH "TO THE EXTENT THEY ARE APPLICABLE..."

SECTION 8(B) OF FACA REQUIRES THE HEAD OF EACH DEPARTMENT AND AGENCY WHICH SPONSORS AN ADVISORY COMMITTEE TO FORMALLY

DESIGNATE AN "ADVISORY COMMITTEE MANAGEMENT OFFICER" WITH BROAD RESPONSIBILITIES FOR OVERSEEING THE ACT'S IMPLEMENTATION. THE COMMITTEE MANAGEMENT OFFICER IS ACCOUNTABLE FOR ASSURING THAT EACH COMMITTEE IS NECESSARY, THAT UNWARRANTED COMMITTEES ARE TERMINATED THROUGH APPROPRIATE ACTION, AND THAT ESSENTIAL GROUPS RECEIVE SUPPORT CONSISTENT WITH THEIR MISSIONS.

SECTION 9(A) OF THE ACT REQUIRES THE HEADS OF DEPARTMENTS AND AGENCIES WISHING TO ESTABLISH AN ADVISORY COMMITTEE TO "CONSULT" WITH GSA. SECTION 9(C) PROVIDES THAT NO COMMITTEE SHALL MEET OR TAKE ANY ACTION PRIOR TO THE FILING OF A CHARTER WITH THE ADMINISTRATOR OF GENERAL SERVICES (IN THE CASE OF A PRESIDENTIAL COMMITTEE), OR THE HEAD OF THE AGENCY CONCERNED, AND APPROPRIATE STANDING COMMITTEES OF CONGRESS.

SECTION 10 OF FACA OUTLINES PROCEDURES TO BE FOLLOWED TO ASSURE THAT MEETINGS HELD BY FEDERAL ADVISORY COMMITTEES BE OPEN AND ACCESSIBLE TO THE PUBLIC TO THE MAXIMUM EXTENT POSSIBLE. IN ADDITION TO REQUIRING THE DESIGNATION OF A DESIGNATED FEDERAL OFFICER, WHO IS RESPONSIBLE FOR ASSURING A GIVEN COMMITTEE'S COMPLIANCE WITH FACA, SECTION 10(D) PROVIDES ADDITIONAL CONTROLS OVER THE CIRCUMSTANCES UNDER WHICH COMMITTEE MEETINGS MAY BE CLOSED TO THE PUBLIC. THESE CONTROLS INCORPORATE THE CRITERIA LISTED IN THE GOVERNMENT IN THE SUNSHINE ACT (5 U.S.C., 552(B)).

THESE BASIC CONTROLS SPECIFIED BY THE ACT SERVE AS THE BASIS FOR REGULATIONS ISSUED BY GSA. GSA'S CURRENT REGULATIONS WERE ISSUED ON DECEMBER 2, 1987 (52 FR 45926).

IN COMPILING INFORMATION RELATING TO THE GOVERNMENTWIDE MANAGEMENT OF FEDERAL ADVISORY COMMITTEES, GSA RELIES HEAVILY ON DATA COLLECTED AS PART OF THE CONSULTATION PROCESS REQUIRED BY SECTION 9(A) OF THE ACT AND THAT COLLECTED PURSUANT TO FACA'S REQUIREMENT FOR AN ANNUAL COMPREHENSIVE REVIEW OF ALL COMMITTEE ACTIVITIES, CONTAINED IN SECTION 7(B).

IN EXECUTING ITS RESPONSIBILITIES UNDER SECTIONS 9(A) AND 7(B), THE SECRETARIAT MAINTAINS DETAILED RECORDS ON ALL GROUPS FOR WHOM CHARTERS HAVE BEEN FILED CONSISTENT WITH SECTION 9(C) OF THE ACT. THESE RECORDS ARE MAINTAINED IN ORDER TO VALIDATE THE TOTAL INVENTORY SUBMITTED TO GSA IN FULFILLMENT OF FACA'S REQUIREMENT FOR AN ANNUAL REPORT TO CONGRESS (SECTION 6).

GSA ALSO MAINTAINS A CONTINUING DIALOGUE WITH ALL DEPARTMENTAL COMMITTEE MANAGEMENT OFFICERS TO REMAIN ABREAST OF ANY DEVELOPMENTS WHICH MAY AFFECT THE ACCURACY OF ITS COMMITTEE INVENTORY. AND, WHERE APPROPRIATE, THE SECRETARIAT MONITORS ISSUES AFFECTING ADVISORY COMMITTEES THROUGH SUCH SOURCES AS THE FEDERAL REGISTER, THE CONGRESSIONAL RECORD, AND THE MEDIA.

GSA ALSO RELIES HEAVILY UPON EACH AGENCY'S COMMITTEE MANAGEMENT OFFICER AS A MEANS OF ASSURING COMPLIANCE WITH FACA. THE SECRETARIAT HAS TAKEN SPECIAL ACTIONS TO ASSURE THEIR FAMILIARITY WITH THE LAW AND GSA'S REGULATIONS, AND TO REINFORCE THE NEED FOR ACCURATE INFORMATION SUBMITTED AS PART OF THE ANNUAL REPORTING PROCESS.

DURING MY TESTIMONY BEFORE THE COMMITTEE ON DECEMBER 3, 1987, MR. CHAIRMAN, I MENTIONED THAT GSA HAD CREATED AN INTERAGENCY COMMITTEE ON FEDERAL ADVISORY COMMITTEE MANAGEMENT. THAT COMMITTEE IS COMPOSED OF COMMITTEE MANAGEMENT OFFICERS FROM 20 KEY DEPARTMENTS AND AGENCIES, AND IS CURRENTLY ADDRESSING SUCH CRITICAL ISSUES AS THE STANDARDIZATION OF THE ANNUAL REPORTING PROCESS; THE DEVELOPMENT OF A TRAINING PROGRAM FOR THE BROAD RANGE OF INDIVIDUALS INVOLVED IN THE COMMITTEE MANAGEMENT PROCESS; AND, THE DEVELOPMENT OF STREAMLINED PROCEDURES COVERING THE CREATION AND EVALUATION OF COMMITTEE ACCOMPLISHMENTS.

AS THE FIRST INSTALLMENT OF THIS GROUP'S EFFORTS, GSA AND THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES ARE SPONSORING A 2-DAY CONFERENCE ON THE ACT. THIS EVENT HAS BEEN PREPARED IN CONJUNCTION WITH SUCH OTHER GROUPS AS THE FEDERAL BAR ASSOCIATION, THE FEDERAL ADVISORY COMMITTEE MANAGEMENT ASSOCIATION, AND THE AMERICAN SOCIETY OF ACCESS PROFESSIONALS. STAFF FROM THE SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS HAVE ALSO BEEN INVOLVED

IN THIS EFFORT AND IT IS OUR HOPE THAT IT SERVES AS A CATALYST FOR SIMILAR VENTURES.

THESE EFFORTS SERVE TO STRENGTHEN COMMUNICATIONS BETWEEN GSA AND THE FEDERAL COMMUNITY, ASSURING THAT THE SECRETARIAT RECEIVES COMPLETE AND ACCURATE INFORMATION RELATING TO THE FEDERAL ADVISORY COMMITTEE INVENTORY.

IF GSA DETECTS A COMMITTEE WHICH ITS BELIEVES SHOULD BE OPERATING UNDER FACA, BUT IS NOT, SEVERAL OPTIONS ARE AVAILABLE TO RESOLVE ANY OUTSTANDING ISSUES. AT THE MOST BASIC LEVEL, THE SECRETARIAT REQUESTS ADDITIONAL INFORMATION FROM THE APPROPRIATE DEPARTMENTAL COMMITTEE MANAGEMENT OFFICER AND SEEKS CLARIFICATION AS TO THE BASIS FOR EXCLUDING THE GROUP FROM THE ACT'S COVERAGE. ASSUMING THE LEGAL RATIONALE FOR THE AGENCY'S ACTION IS DEEMED APPROPRIATE, THE MATTER IS CONCLUDED AND DOCUMENTED IN GSA'S FILES.

CONTINUING DISAGREEMENT BETWEEN THE SECRETARIAT AND THE DEPARTMENTAL COMMITTEE MANAGEMENT OFFICER MAY RESULT IN FURTHER ESCALATION OF THE MATTER TO HIGHER LEVELS WITHIN THE AGENCY E.G., TO THE ASSISTANT SECRETARY FOR ADMINISTRATION, THE GENERAL COUNSEL, OR THE AGENCY HEAD. IN RARE INSTANCES, WHERE THE MATTER CANNOT BE RESOLVED AGENCY-TO-AGENCY, GSA MAY REQUEST A FORMAL OPINION FROM THE DEPARTMENT OF JUSTICE.

MR. CHAIRMAN, YOU ASKED GSA TO ADDRESS SPECIFICALLY THE STATUS OF ADVISORY COMMITTEES CREATED IN CONNECTION WITH THE PERFORMANCE OF FEDERAL CONTRACTS AND WHETHER OR NOT THEY ARE COVERED BY THE FEDERAL ADVISORY COMMITTEE ACT.

THERE IS AN EXTREMELY LIMITED AMOUNT OF CASE LAW RELATING TO SUCH GROUPS.

HOWEVER, GIVEN THE WAY YOUR QUESTION IS POSED -- THAT IS, IF A CONTRACTOR PROVIDES ONLY ADMINISTRATIVE SUPPORT TO AN ADVISORY COMMITTEE AND OTHER FEATURES OF THE COMMITTEE ARE INDISTINGUISHABLE FROM GROUPS SUBJECT TO FACA, I.E., THE GROUP PROVIDES ADVICE DIRECTLY TO A FEDERAL OFFICIAL, AND OTHER CRITERIA ARE MET, THEN IT SEEMS TO GSA THAT THE COMMITTEE SHOULD BE COVERED. FROM OUR UNDERSTANDING OF THE ISSUES INVOLVED, THE TEST FOR INCLUSION UNDER THE ACT IS THAT THE AGENCY'S CONTRACT REQUIRES THAT THE ADVICE OF A GROUP OF OTHER THAN CONTRACTOR PERSONNEL BE PROVIDED TO THE AGENCY, AND THAT THE CONTRACTOR HAS NOT MERELY SOLICITED ADVICE AS A PART OF ACTIVITIES INCIDENTAL TO THE PERFORMANCE OF THE CONTRACT.

FINALLY, MR. CHAIRMAN, YOU INQUIRED AS TO GSA'S ROLE IN DETERMINING THE STANDARDS OF CONDUCT APPLICABLE TO ADVISORY COMMITTEE MEMBERS AND OUR THOUGHTS REGARDING ANY ADDITIONAL LEGISLATIVE AUTHORITY WHICH MAY BE NECESSARY TO ENHANCE THE SECRETARIAT'S ABILITY TO ENFORCE COMPLIANCE WITH FACA.

WHILE GSA HAS AN INTEREST IN THE APPLICABILITY OF FEDERAL CONFLICT-OF-INTEREST STATUTES TO MEMBERS OF FEDERAL ADVISORY COMMITTEES BECAUSE OF ITS OVERALL RESPONSIBILITIES FOR SUCH GROUPS UNDER FACA, THE ETHICS IN GOVERNMENT ACT OF 1978 HAS ASSIGNED THE OFFICE OF GOVERNMENT ETHICS (OGE) THE RESPONSIBILITY FOR OVERALL DIRECTION OF EXECUTIVE BRANCH POLICIES RELATED TO PREVENTING CONFLICTS OF INTEREST ON THE PART OF OFFICERS AND EMPLOYEES OF ANY EXECUTIVE AGENCY.

GSA HAS TAKEN STEPS TO REMAIN COGNIZANT OF THE REQUIREMENTS OF CONFLICT-OF-INTEREST STATUTES VIS-A-VIS MEMBERS OF ADVISORY COMMITTEES AND, WHERE APPROPRIATE, TO NOTIFY AGENCIES OF CHANGES IN THIS AREA. FOR EXAMPLE, THE OGE'S OPINION ON THE APPLICABILITY OF SUCH STATUTES TO FEDERAL ADVISORY COMMITTEE OPERATIONS, DATED JULY 9, 1982, HAS BEEN DISTRIBUTED BY THE SECRETARIAT TO INTERESTED PARTIES ON MANY OCCASIONS. SIMILARLY, ON SEPTEMBER 20, 1984, THE SECRETARIAT NOTIFIED AGENCIES OF PROPOSED CHANGES TO THE OGE'S REGULATIONS IMPLEMENTING THE ETHICS IN GOVERNMENT ACT OF 1987, AS AMENDED BY PUBLIC LAW 98-150.

GSA INTENDS TO MAINTAIN A CLOSE WORKING RELATIONSHIP WITH OGE. AS PART OF THIS COMMITMENT, GSA HAS INITIATED DISCUSSIONS AT THE STAFF LEVEL TO DEVELOP THE MEANS TO IMPROVE THE UNDERSTANDING OF THE FEDERAL COMMUNITY OF THE APPLICATION OF ETHICS STATUTES TO ADVISORY COMMITTEE MEMBERS. WE ARE EXPLORING SEVERAL OPTIONS, INCLUDING THE CROSS-REFERENCE OF ETHICS REQUIREMENTS CONTAINED IN OGE REGULATIONS WITHIN GSA'S FINAL RULE ON FEDERAL ADVISORY COMMITTEE MANAGEMENT. IN ADDITION, GSA WILL DEVOTE A SUBSTANTIAL PORTION OF ITS TRAINING COURSE ON FACA, WHICH IS CURRENTLY UNDER DEVELOPMENT, TO ETHICS ISSUES. WE BELIEVE THESE EFFORTS WILL PERMIT GREATER PENETRATION OF THE ISSUES INVOLVED AT THE APPROPRIATE LEVELS WITHIN ORGANIZATIONS SPONSORING ADVISORY COMMITTEES.

GSA DOES NOT BELIEVE IT IS NECESSARY TO PURSUE LEGISLATION WHICH WOULD PROVIDE A DIRECT ROLE FOR THE SECRETARIAT IN MATTERS RELATED TO CONFLICT-OF-INTEREST.

WITH REGARD TO OTHER LEGISLATIVE OPTIONS TO IMPROVE GSA'S ABILITY TO DETECT COMMITTEES WHICH SHOULD COME UNDER FACA, IT IS OUR BELIEF THAT THE SECRETARIAT'S CURRENT AUTHORITIES ARE SUFFICIENT FOR THIS PURPOSE.

In our opinion, initiatives undertaken with the Federal Community during the past year, combined with those suggestions offered to the Senate Committee on Governmental Affairs at its initial hearing on FACA (should they be enacted), will result in a stronger, more effective oversight process.

Mr. Chairman, this concludes my prepared statement. I will take any questions you may have at this point.

################

United States Senate
Committee On Governmental Affairs
Hearings On The Governmentwide Implementation Of The
Federal Advisory Committee Act

April 19, 1988 Hearing

QUESTION: On December 17, 1987, the Committee wrote to GSA expressing some concerns about the balanced membership provisions contained in GSA's Final Rule on advisory committee management, dated December 2nd. We understand that GSA has agreed to initiate a supplementary notice of proposed rulemaking. What is the status of this?

ANSWER: On February 1, 1988, GSA advised the Senate Committee on Governmental Affairs of its intent to review the various issues related to the balanced membership provisions of the Federal Advisory Committee Act (FACA) with the Office of Management and Budget (OMB) and other appropriate parties.

Since that time, GSA has met with staff from OMB and the Committee to review the concerns raised during the December 3, 1988 hearing on the Act. These discussions have resulted in a decision by GSA to initiate a Supplementary Notice of Proposed Rulemaking.

A draft rulemaking notice has been developed by GSA in conjunction with the respective staffs of OMB and the Committee on Governmental Affairs. Final comments on the draft were received by GSA from the Committee's staff on April 18, 1988.

GSA is in the process of developing a final draft of the Supplementary Notice of Proposed Rulemaking. Once completed, the draft will be provided to the Committee's staff, OMB, and GSA's Interagency Committee on Federal Advisory Committee Management for comment. Based upon this process, GSA anticipates publication of the proposed rule in the Federal Register during July 1988.

United States Senate
Committee On Governmental Affairs
Hearings On The Governmentwide Implementation Of The
Federal Advisory Committee Act

April 19, 1988 Hearing

QUESTION: In GSA's written testimony, GSA indicates it is considering cross-referencing ethics requirements contained in OGE regulations within GSA's Final Rule; at the hearing Senator Levin urged GSA to do so. Does GSA plan to include a cross-reference in the supplementary notice of proposed rulemaking?

ANSWER: Yes, GSA intends to include a cross-reference to the regulations issued by the Office of Government Ethics within its Supplementary Notice of Proposed Rulemaking.

GSA believes that a cross-reference to OGE's regulations would be helpful in underscoring the importance of ethics considerations in the creation and operation of Federal advisory committees.

United States Senate
Committee On Governmental Affairs
Hearings On The Governmentwide Implementation Of The
Federal Advisory Committee Act

April 19, 1988 Hearing

QUESTION: GSA requires that agencies submit a balanced membership plan at the time it consults with GSA on creating an advisory committee. In the experience of the Committee Management Secretariat, does DOD's plan for each committee set forth its criteria for selecting a balanced membership? Should this information be published in the Federal Register?

ANSWER: In the experience of the Committee Management Secretariat, DOD has fully complied with GSA's requirements for documenting its approach to achieving balance membership on each of its Federal advisory committees.

GSA is not, however, satisfied with the current process it utilizes to document the criteria used by Executive Branch departments and agencies in assuring balanced membership. GSA has discussed this issue with the Senate Committee on Governmental Affairs at the staff level and is prepared to initiate corrective actions through a Supplementary Notice of Proposed Rulemaking.

GSA believes that balanced membership is intrinsically related to the functions of a given committee and that specific selection criteria should be developed and documented in the Federal Register.

United States Senate
Committee On Governmental Affairs
Hearings On The Governmentwide Implementation Of The
Federal Advisory Committee Act

April 19, 1988 Hearing

QUESTION: DOD Directive 4205.2 (enclosed) prescribes procedures for the management of Contracted Advisory and Assistance Services (CAAS). Section D(3)(i) states that:

> The proper use of CAAS is a legitimate and economical way to: ...Secure citizen advisory participation in developing or carrying out Government programs that, by their nature or by statutory provisions, call for such participation. (See OMB No. Circular A-63 and DOD Directive 5105.18 [reference (f) and (g)]).

While no specific reference is made in this Directive to the Federal Advisory Committee Act (FACA), Section D(3)(i) does refer to OMB and DOD guidelines regarding advisory committee management.

(a) What is the status of OMB Circular A-63? Is it still in effect?

(b) In your view, could FACA apply to a study group organized pursuant to the CAAS Directive? If so, what criteria should be used to make such a determination? Should the CAAS Directive cross-reference FACA and make it clear that a study group created pursuant to the Directive must also comply with FACA, where appropriate?

ANSWER: OMB Circular A-63 is no longer in effect. This guidance, which was developed during the course of the Committee Management Secretariat's tenure at OMB from 1972 to 1977, was superseded by GSA's Interim Rule on Federal Advisory Committee Management, dated April 28, 1983, and GSA's Final Rule, dated December 2, 1987.

ANSWER:
(CONTINUED) In GSA's view, a group organized pursuant to DOD's CAAS Directive may fall under the purview of the Federal Advisory Committee Act if it meets the criteria set forth in section 3 of the Act.

It is apparent that the CAAS Directive has not been updated to accurately reference current guidance issued by GSA on the implementation of the Act. GSA would recommend that the Directive be updated for this purpose.

GSA would also recommend that DOD consult with the Office of Management and Budget to assure the Directive's consistency with current guidance on the use of consultant services.

United States Senate
Committee On Governmental Affairs
Hearings On The Governmentwide Implementation Of The
Federal Advisory Committee Act

April 19, 1988 Hearing

QUESTION: Does GSA plan to issue guidelines explaining when advisory groups associated with contracts must comply with FACA.

ANSWER: GSA is currently evaluating the need for additional guidance in this area.

GSA agrees that departments and agencies sponsoring advisory committees should be cautioned that it is the function of the group, not the mechanism used for establishment, that is the controlling factor in determining the applicability of FACA.

FOR RELEASE ON DELIVERY
Expected at 2:00 p.m. EDT
April 19, 1988

STATEMENT OF

FRANK Q. NEBEKER
DIRECTOR
OFFICE OF GOVERNMENT ETHICS

BEFORE
THE SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS

ON
THE FEDERAL ADVISORY COMMITTEE ACT, 5 U.S.C. APP. 2

APRIL 19, 1988

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I appreciate your invitation to appear before this Committee to discuss the application of the federal ethics rules to members of advisory committees established under the Federal Advisory Committee Act and to discuss the application of Department of Defense (DOD) Directive 5500.7 to DOD advisory committee members. In my statement, I have set out the questions that were raised in the Committee's March 25, 1988 letter requesting OGE's participation in this hearing and have provided an answer to each.

Please describe the role of the Office of Government Ethics (OGE) with respect to federal advisory committees.

Section 402 of the Ethics in Government Act states that the Director of OGE shall provide "overall direction of executive branch policies related to preventing conflicts of interest on the part of officers and employees of any executive agency . . . ." Within that framework, the head of the agency has primary responsibility for the administration of the "ethics in government" program within his or her agency, as stated at 5 C.F.R. § 738.102. Accordingly, as to advisory committee members who are employees or special Government employees, OGE's guidance on ethics matters would apply, but primary responsibility for counseling and training those members would reside with the Designated Agency Ethics Official at the sponsoring agency.

Neither the Federal Advisory Committee Act, 5 U.S.C. App. 2, nor the implementing regulations at 41 C.F.R. Part 101-6.10 assign to OGE any particular role with respect to federal advisory committees. However, since government employees and special Government employees serve on federal advisory committees, the standards of conduct regulations and conflict of interest statutes apply to such persons. In addition, OGE intends to work with GSA to ensure a consistent approach to handling ethics issues.

Not all advisory committee members are employees or special Government employees. Members of advisory committees may be full-time government employees who are appointed to serve on the committee, special Government employees, or non-employees. As defined in 18 U.S.C. § 202(a), a special Government employee is an officer

or employee of the federal government who is appointed or employed to serve it, with or without compensation, for not more than 130 days during any period of 365 consecutive days, either full-time or intermittently. A committee member who is appointed to present views of a nongovernmental organization or group which he represents does not act as a servant of the federal government and, therefore, is not considered an officer or employee thereof. The standards of conduct and conflict of interest statutes do not apply to members who are not employees or special Government employees.

Please address the extent to which OGE has worked with the General Services Administration (GSA) and individual agencies to establish and interpret standards of conduct for advisory committee members, to counsel committee members, to train personnel, and to oversee agency actions.

OGE did not work specifically with the General Services Administration to establish and interpret standards of conduct for advisory committee members for several reasons. The first is that such standards already exist for advisory committee members who are employees or special Government employees. Executive Order 11222 of 1965 empowered the Civil Service Commission (the predecessor of the Office of Personnel Management) to establish regulations governing the conduct of civil service employees. Section 301 of the Order set forth standards of conduct specifically for special Government employees. Regulations implementing the Executive Order are in place at each executive branch agency, based on the model regulations at 5 C.F.R. Part 735.

As to working with individual agencies, OGE routinely advises agencies on matters pertaining to employees and special Government employees serving on advisory committees, just as we do on ethics matters pertaining to executive branch employees in general. One key area in which we assist agencies is in making the initial determination as to the status of an advisory committee member, i.e., whether the member is or is not an employee. Frequently, the instrument authorizing the establishment of the committee does not mention the status of the members, and the agency with authority over the committee must make that determination itself. On July 9, 1982, OGE issued a memorandum entitled "Members of Federal Advisory Committees and the Conflict-of-Interest Statutes." It explains the factors an agency must consider in determining whether the members of any advisory committee connected with that agency are employees or special Government employees, and indicates that the conflict-of-interest laws apply to those who are deemed employees or special Government employees. After an agency makes this initial determination, it should bring the employees (regular employees and special Government employees) serving on the committee into its financial disclosure and ethics training programs.

Please summarize the governmentwide standards of conduct applicable to federal advisory committee members and how they relate to individual agency rules. Please address in particular who is subject to prohibitions against conflicts of interest, who must file financial disclosure forms, and who is subject to criminal sanctions for misconduct.

As noted earlier, the executive branch-wide conflict of interest statutes, regulatory standards of conduct, and financial disclosure requirements apply only to employees or special Government employees. If a member is not an employee or special Government

employee, there are no governmentwide standards that apply to that individual. However, for those who are, the following is a brief summary of the provisions of statutes and regulations. The summary is intended to provide general descriptions of the statutory restrictions and not to be relied upon as complete restatements thereof. The following summary sets forth all requested information first for employees followed by the information for special Government employees.

Executive Branch Employees

A. Criminal conflict of interest statutes

— 18 U.S.C. § 203 prohibits an employee from receiving compensation or for sharing in compensation received by another for representing another (except the United States) before any department, agency, court-martial, officer or commission in any particular matter in which the United States is a party or has an interest.

— 18 U.S.C. § 205 prohibits an employee from representing another (except the United States), with or without compensation, before any department, agency, court, court-martial, officer or commission in any particular matter in which the United States is a party or has an interest.

Note: sections 203 and 205 contain an exception to allow an employee, with agency permission, to represent a fellow employee without compensation on a personnel administration matter, and an exception to allow an employee to represent, with notice to the employing agency, a parent, spouse, child or any person or estate for whom he is serving as a personal fiduciary, so long as it is not a matter in which he has personally and substantially participated as a government employee or which is under his official responsibility.

— 18 U.S.C. § 208 prohibits an employee from taking any official act in any particular matter in which he, his spouse, minor child, partner, organization in which he serves as an officer, director, trustee, partner or employee, or with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest. Section 208 has two waiver provisions, one utilized on a case-by-case basis for interests of an individual that are not so substantial so as to be deemed likely to affect the individual's services, and one published as a general rule for interests that are too remote or too inconsequential to affect the services of the group of employees identified in the rule.

— 18 U.S.C. § 209 prohibits an employee who is compensated by the government from receiving from a source other than the government any salary or supplementation of salary as compensation for government services. It does not apply to payments from a bona fide employee benefit plan maintained by a former employer.

To the extent an advisory committee member is not serving as an employee or a special Government employee, he will be representing a private interest. If that advisory committee member is a former executive branch employee, section 207 will apply to his actions as a representative of business or industry on the advisory committee in the following manner:

— 18 U.S.C. § 207(a) prohibits the former employee from representing another (except the United States), orally or in writing, to the government on a particular matter if he had personally and substantially participated on that matter as a government employee and the matter involved a specific party or parties when he participated on it.

— 18 U.S.C. § 207(b)(i) prohibits the former employee, generally for a period of two years following termination of employment, from representing another (except the United States), orally or in writing, to the government on a particular matter involving a specific party or parties if that matter had been pending under his official responsibility within one year prior to the termination of that official responsibility.

— 18 U.S.C. § 207(b)(ii) prohibits a former "senior" employee for a period of two years following termination of employment from assisting another by his personal presence at a representation made by another (except the United States) before the government on a particular matter involving a specific party or parties in which the former senior employee had participated as a government employee.

— 18 U.S.C. § 207(c) prohibits a former "senior" employee for a period of one year following termination of employment from representing anyone (except the United States) to his former agency or an employee thereof or making any statement thereto with the intent to influence on a matter in which the United States is a party or has an interest.

B. Executive Order 11222

The provisions of this Order and agency regulations promulgated pursuant to this Order apply fully to employees. The Order sets forth the following basic standard:

Employees shall avoid any action which might result in or create the appearance of —

(1) using public office for private gain;

(2) giving preferential treatment to any organization or person;

(3) impeding government efficiency or economy;

(4) losing complete independence or impartiality of action;

(5) making a government decision outside official channels; or

(6) affecting adversely the confidence of the public in the integrity of the government.

In addition, the regulations have more specific restrictions with regard to gifts; outside employment or other activities; financial interests; use of government property; misuse of information; indebtedness; gambling, betting, and lotteries; and general conduct prejudicial to the government.

C. Financial disclosure

Title II of the Ethics in Government Act requires public financial disclosure reports from individuals carrying out the duties of those positions listed in section 202(f) (generally GS-16 level and above, Schedule C's, and 0-7's and above in the uniformed services) for more than 60 days in any calendar year. Section 207 of the Ethics in Government Act, coupled with an OGE request that agencies maintain their confidential disclosure system established under Executive Order 11222 until a new system is in place, requires confidential financial disclosure generally on the part of individuals serving in GS-13 through 15 positions.

Executive Branch Special Government Employees

A. Criminal conflict of interest statutes

— 18 U.S.C. § 203 — (1) prohibits any special Government employee from receiving compensation or sharing in compensation received by another for representations of another (except the United States) before any department, agency, court-martial, officer or commission in any matter involving a specific party in which the United States is a party or has an interest and in which he personally and substantially participated; and (2) prohibits a special Government employee who serves more than 60 days within a department from receiving compensation or sharing in compensation received by another for representing any other person (except the United States) before any government department, agency, court-martial, office or commission on a particular matter involving a specific party which is pending in the department or agency in which he serves.

Section 203 applies during the entire period of the appointment even when the individual is not actually employed. See also the text immediately following dealing with § 205.

— 18 U.S.C. § 205 — (1) prohibits any special Government employee who, otherwise than in the proper discharge of his official duties, acts as an agent or attorney for another (except the United States) before any department, agency, court, court-martial, officer, or any civil, military or naval commission in connection with a particular matter involving a specific party in which he has at any time participated personally and substantially as a special Government employee; and (2) prohibits a special Government employee who serves more than 60 days within a department from acting as agent or attorney for another (except the United States) before any department, agency, court, court-martial, officer, or any civil, military or naval commission in connection with any proceeding or other particular matter involving a specific party which is pending in the department or agency of the government in which he is serving.

There are four exceptions in § 203 and § 205. The first is certification by head of the agency in the Federal Register that the service of the special Government employee in performance of work under a grant by, or contract with or for the benefit of, the United States is required in the national interest. Second, an employee or special Government employee may represent another government employee in a disciplinary, loyalty or other personnel matter. The third exception permits an employee or special Government employee to represent a parent, spouse,

child, or estate as a fiduciary, but only with approval of the government official responsible for appointment to his government position and only if the matter involved is neither one in which he has participated personally or substantially nor one under his official responsibility. Fourth, an employee or special Government employee may provide testimony under oath.

— 18 U.S.C. § 208 prohibits a special Government employee from participating personally and substantially in his official capacity in a particular matter in which to the employee's knowledge, the employee, the employee's spouse, minor child, partner, organization in which the employee is serving as officer, director, trustee, partner or employee or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest. Prohibited participation may occur through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise.

This restriction does not apply if: (1) the individual is issued a written waiver for an interest which is not so substantial as to be deemed likely to affect the individual's services; or (2) it is a remote or inconsequential interest which is waived by general rule.

— 18 U.S.C. § 209 does not apply to special Government employees.

Again, for the advisory committee member who is not now an employee or special Government employee but who had served previously in some other capacity as a special Government employee, the post-employment restrictions of 18 U.S.C. § 207, as outlined above, apply in the same manner as they do for former employees, with one exception. Section 207(c), the one year "cooling-off" ban, does not apply to a former "senior" special Government employee who had served an agency less than 60 days in a calendar year.

B. Executive Order 11222 and Regulations Thereunder

Part III of the Executive Order sets forth standards for special Government employees which, without regard to the subsequently enacted Ethics in Government Act, agencies must also address in their regulations. The standards deal generally with using public office for private gain, using inside information gained in the course of carrying out government duties, coercing others based on public office, or accepting gifts from those who do business with the employee in his official capacity.

C. Financial Disclosure

Title II of the Ethics in Government Act would require any special Government employee who serves over 60 days in a covered position (whether or not compensated) to file a public financial disclosure report. Section 207 of the Act and section 306 of Executive Order 11222 are the bases on which this Office requests agencies to collect confidential financial disclosure reports from special Government employees. Until our regulations are published in final and agencies have had an opportunity to implement their new programs, it will not be clear which special Government employees are required to file. At present we believe most agencies have continued to collect the short statements of employment and financial interests from special Government employees.

In a related area, an individual who performs staff functions for more than 60 days in support of an advisory committee on which at least one special Government employee sits must file a public financial disclosure report if the position the individual holds is at a level outlined in section 201(f) of the Act. See section 201(j) of the Act and 5 C.F.R. § 734.202(h).

Do these rules apply to advisory committees formed under contracts?

If a member of an advisory committee is deemed to be performing a federal function, he will most likely be covered by the conflict of interest statutes and probably the standards of conduct. Therefore, it would seem to make no difference whether the advisory committee was established by contract, by statute, by regulation or otherwise. The focus for conflicts purposes is on what the advisory committee members are doing, not on how the committee was formed.

Do [these rules] distinguish between advisory committees which are covered by FACA and those which are not? Should they?

The conflict of interest statutes and regulations do not distinguish between members of federal advisory committees which are covered by FACA and those which are not. FACA and the ethics restrictions serve different purposes and neither should be sacrificed for purposes of conformity with the other.

Please indicate whether additional ethics rules are needed, on a governmentwide basis, for advisory committees.

The present system of criminal conflict of interest statutes and administrative standards of conduct provides good basic standards. Agencies' understanding of these statutes and their implementation as they affect advisory committees may need improvement. The confidential financial disclosure requirements for special Government employees were addressed in the Office's proposed regulations for a new executive branch-wide system and will continue to be a part of the final regulations when published.

Please address whether all advisory committee members should be subject to prohibitions against conflicts of interest, financial disclosure requirements and criminal sanctions.

Advisory committees can be used by the government to provide advice and recommendations and to direct government action. They also can be used to seek the views of industry or business. In the case of the former, members should be subject to the conflict statutes while carrying out these federal functions in order to protect the Government's decision making processes. On the other hand, when the advisory committee is established to seek the views of business or industry to be evaluted by an agency in formulating government action, subjecting these members to the conflicts statutes would undoubtedly defeat the purpose. To seek the views of business and industry, the agency would most logically go to representatives of those sectors who, if subject to all of the conflict of interest restrictions, would be disqualified from acting on the very subjects for which they were appointed to participate. Rather than subject all advisory committee members to the conflicts restrictions, it would be better to define the functions of the various advisory committees to clarify whether an agency was seeking

advice unbiased by financial conflicts from citizens selected for their knowledge, experience and thoughtfulness, or whether it was truly seeking the views of representatives of private sector interests who would be directly affected by the agency's actions in the matter. We believe there is a legitimate role for both kinds of advice and information, and it would be counterproductive to apply the ethics restrictions to all advisory committee members regardless of the purpose for which their views were solicited.

Should the regulations implementing FACA, issued by GSA, be changed to include more language on or cross-references to the standards of conduct applicable to advisory committee members?

Certainly a reference in the GSA governmentwide regulations indicating that certain advisory committee members may be subject to various ethics restrictions and that information about those restrictions should be provided by the agency which the committee serves, would be a helpful reminder to all involved. The various restrictions can hardly be restated in the GSA regulations because there are certain legitimate differences in the administrative standards imposed by agencies, depending upon their missions. It would be unwieldy, and may defeat the intended purpose, to try to articulate these differences in one regulation.

It is the subcommittee's understanding that OGE worked closely with DOD to develop new ethics regulations. Please describe how DOD Directive 5500.7 (May 6, 1987), which prescribes standards of conduct for "all DOD personnel," applies to DOD advisory committee members and whether it distinguishes between DOD advisory committees which are covered by FACA and those which are not.

In reviewing DOD Directive 5500.7 (May 6, 1987), OGE premised its comments on the assumption that the scope of the phrase "all DOD personnel," as defined in the Definitions section found in Enclosure 2-1, included all Government employees as defined in 5 U.S.C. § 2105. This provision provides that for purposes of Title 5, a person is regarded as an employee of the United States if he is (1) appointed by a Federal officer or employee, (2) is engaged in the performance of a federal function under law, and (3) is subject to the supervision of a federal officer or employee. Specific reference is also made in the Directive to the definition of a special Government employee.

Although, in general, the standards in the Directive do not address advisory committee members per se, provisions which apply to such employees as well as to regular employees pervade the standards. No distinction, however, is made between advisory committees which are covered by FACA and those which are not.

What suggestions does OGE have, if any, to improve the Directive with respect to advisory committees?

DOD has expressed reservations in the past concerning the interpretation of the term "particular matter" for purposes of applying section 208's restrictions. The DOD Directive's definitional materials under 18 U.S.C. § 208 state that a particular matter may be less concrete than an actual contract, but is something more specific than rulemaking or consideration of abstract scientific principles. The Directive goes on to

indicate that the test to be used in such situations is whether the individual might reasonably anticipate that his government action or the decision in which he participates or advises will have a direct and predictable effect upon a financial interest.

While the language used in the Directive properly articulates the test to be applied in making such determinations, the term "particular matter" has been interpreted by this Office and the Department of Justice to include rulemaking and general policy matters, and extends to all discrete matters that are the subject of agency action, no matter how general the effect. At the time of our review of the Directive, we pointed out these differences of interpretation to officials of the DOD. We were advised that the Directive language will be changed and that all counseling will include the broader interpretation of "particular matter."

United States
Office of Government Ethics
P.O. Box 14108
Washington, D.C. 20044

MAY - 9 1988

The Honorable John Glenn
Chairman
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510-6250

Dear Senator Glenn:

We are providing the following information in response to the post-hearing questions you posed in your April 25, 1988 letter. We have reprinted your questions to correspond with our answers.

Should appointing authorities be required to specify for each member of an advisory committee whether that member is being appointed as a regular or special Government employee or as a representative of an industry or other non-governmental interest?

Yes, the appointing authorities should be required to specify whether a member of an advisory committee is being appointed as a regular or special Government employee or in a representative capacity. Rather than subject all advisory committee members to the conflicts restrictions, it would be better to define the functions of the various advisory committees to clarify whether an agency is seeking advice unbiased by financial conflicts from citizens selected for their knowledge, experience, and thoughtfulness, or whether it is seeking the views of representatives of private sector interests who would be directly affected by the agency's actions in the matter. Once this determination is made, the appointing authority should notify the advisory committee member of his status so that he can be made aware of what, if any, standards of conduct regulations and conflict of interest statutes are applicable to him.

Should all advisory committee members, whether government employees or not, be required to file financial disclosure statements before serving on a committee?

Requiring a form of financial disclosure from all advisory committee members who are regular or special Government employees would be a good practice. Disclosure reports from Government employees serving on advisory committees, if properly reviewed, would serve as a useful tool in evaluating the potential for conflicts of interest. Where such potential conflicts appear, the employee should be counseled as to the steps to take to avoid conflicts of interest.

As for non-employee members of advisory committees, there may be circumstances under which the agency sponsoring the committee would wish to obtain additional information concerning committee members' assets and affiliations. The agency should have the option to require confidential disclosure of such information as is necessary to evaluate whether, as a policy matter, a committee member should refrain from participating in a matter because of the adverse appearance. This option should be available even though the individual is not covered by the standards of conduct regulations or conflict of interest statutes. I am told that this is the practice at some agencies.

OGE's written testimony indicates that the OGE Director is authorized to provide "overall direction of executive branch policies related to preventing conflicts of interest on the part of officers and employees of any executive agency." Does this statutory language prohibit OGE from issuing government-wide regulations requiring confidential financial disclosure statements from non-employee advisory committee members?

OGE's authority to provide direction relating to preventing conflicts of interest extends to "officers and employees" of executive branch agencies. Consequently, OGE lacks authority to issue governmentwide regulations requiring confidential financial disclosure statements from non-employee advisory committee members.

Under OGE's interpretation of DOD Directive 5500.7 on standards of ethical conduct for DOD personnel, are members of DOD advisory committees required to file the confidential financial disclosure form prior to their formal appointment to a committee?

DOD Directive 5500.7 (32 C.F.R. Part 40) addresses the filing of statements of affiliations and financial interests by regular and special Government employees. As to a regular employee covered by the reporting requirements, including one serving on an advisory committee, 32 C.F.R. § 40.9(c)(1)(i) requires the employee to file an initial statement "[b]efore the assumption of duties, but no later than 45 days following the reporting individual's entry into a position that requires the filing of the DD Form 1555." With regard to special Government employees, 32 C.F.R. § 40.9(c)(1)(iii) requires the report "no later than 30 days following appointment."

Unlike the provision governing special Government employees, the provision governing regular employees requires them to file prior to assuming their duties. These provisions do not, on their face, require members of advisory committees to file confidential disclosure forms prior to their formal appointment to a committee. We have been advised by DOD, however, that the Department is endeavoring to have all members of advisory committees file the forms before they perform any duties on the committee.

There are three members of the Strategic Defense Initiative Advisory Committee (SDIAC) who, contrary to DOD policy, have not been formally appointed to the SDIAC as special Government employees. Are these members bound by DOD Directive 5500.7 on standards of ethical conduct? Are they bound by the criminal conflict of interest laws?

I am told that DOD has determined that the three members of the SDIAC to whom you refer are special Government employees. Accordingly, DOD's standards of conduct and the criminal conflict of interest laws do apply to them.

I hope the foregoing responds adequately to your questions.

Sincerely,

Frank Q. Nebeker

Frank Q. Nebeker
Director

SDIAC Snapshot

as of April 1, 1988

NONCOMPLIANCE WITH CONFLICT OF INTEREST REQUIREMENTS

12 SDIAC members (1 is ex officio)

Began prior to appointment	Began prior to DD 1555	Began prior to DD 1555 review	Began prior to Disqualif. form	No current appointment	No current DD 1555	No current Disqualif. form
12/12	9/12	12/12	12/12	3/12	2/12	6/12

POSSIBLE CONFLICTS OF INTEREST

12 SDIAC members; 10 have filed DD 1555's

Consultant to Entities with SDI Work	Director/ Trustee of Entities with SDI Work	Stockholder in Entities with SDI Work	Other Financial Relationship with Entities doing SDI Work
5/10	6/10	8/10	2/10

PREPARED BY SENATE GAC STAFF

SDIO
ISI
Cohen
Mizell
Eastport
Cohen
Lau
Mizell
ONR
Lau
(Mizell)

DOCUMENT RELATED TO
TERMINATION OF UNCHARTERED
SDIO ADVISORY COMMITTEES

(1) Excerpt from letter dated 5/2/87 from Gen. Abrahamson, Director of Strategic Defense Organization, to Sen. Levin.

SELECTED DOCUMENTS RELATED TO
THE CREATION BY THE DEPARTMENT OF
DEFENSE OF THE FLETCHER & HOFFMAN PANELS

(1) Extracts from Personal Log, D. W. Ream, 1983, Office of General Counsel, Office of Secretary of Defense.

(2) Memorandum, dated June 3, 1983, for Mr. W. H. Taft, General Counsel, Department of Defense, from David W. Ream, Office of General Counsel, Secretary of Defense.

DEPARTMENT OF DEFENSE
STRATEGIC DEFENSE INITIATIVE ORGANIZATION
WASHINGTON, DC 20301-7100

2 May 1987

Honorable Carl Levin
Chairman, Subcommittee on Oversight
of Government Management
Committee on Governmental Affairs
United States Senate
Washington, DC 20510-6250

Dear Mr. Chairman:

This is in response to your March 20, 1987 request for information on the establishment and management of advisory committees on the Strategic Defense Initiative since January 1983.

Details requested under Items (1) through (7) of your letter are provided for the Strategic Defense Initiative Advisory Committee (SDIAC) at Enclosure 1. Tab 4 of Enclosure 1 includes requested financial disclosure statements which are furnished solely for official subcommittee review.

Enclosure 2 includes synopses of several advisory subcommittees and working groups. Details identified in Items (1) through (7) are not maintained for subcommittees.

Enclosure 3 includes synopses of non-government studies provided by contract as requested by Item (8) of your letter. During the assembly of data to respond to your request, I learned that committees had been established in 1985 and 1986 without proper approvals. Most had stopped functioning. At Enclosure 4 are synopses of those activities and a copy of my letter formally terminating unauthorized committees.

Enclosure 5 includes appointment and compensation documents for three individuals appointed as consultants to the SDIO, as requested by Item 9 of our letter. One of them, Mr. Robert Mercer, is now a full-time SDIO employee.

I trust you will find the information responsive to your request.

Sincerely,

James A. Abrahamson

JAMES A. ABRAHAMSON
Lieutenant General, USAF
Director

85-796 0 - 88 - 7

Extracts from Personal Log, D. W. Ream, 1983
Office of General Counsel, Office of Secretary of Defense
[Portions in brackets added to identify individuals]

Monday, 11 Apr

Met with M.G. Donald Lamberson, Executive Secretary to the Def. Tech. Exec. Cmte. Discussed problems of setting up a Hi-tech study group.

Wednesday, 13 Apr

Met with Lamberson. He named several persons he would like to head up a study group. One TRW official. There are no Kors yet, but TRW is a "biggie."

Wednesday, 25 May

Met with COL Lau [Lamberson's exec?]. He discussed setting up the "Star Wars Commission." We outlined problems. He needs folks on board NLT next Wednesday.

Tuesday, 31 May

Meeting: Hollander [DeLauer's Exec], Jack Finlayson [?], Gurden Drake [OSD GC Ofc]. Qs re "Star Wars Commission."

Wednesday, 1 June

Meeting: Lamberson, Hollander, COL Lau, John Wilson [Committee Management], Drake. Lamberson proposed improper use of IDA K; failure to follow Fed Ad. Cmte Act.

Thursday, 2 June

Drake - discussed Star Wars Cmn - I'll draft note to WHT [William Howard Taft, IV, General Counsel].

Tuesday, 7 June

Drake - I advised him that WHT said he has not heard from DeLauer or Lamberson re "Star Wars" Cmn.

DEPARTMENT OF DEFENSE
OFFICE OF GENERAL COUNSEL
WASHINGTON, D.C. 20301

June 3, 1983

MEMORANDUM FOR MR. TAFT

VIA: MR. NIEDERLEHNER

SUBJECT: Defensive Technologies Study

This memorandum is a "heads up" to alert you to a source of potential problems on this study that may arise due to its importance and its high-level participants.

Late last ~~Friday~~ Wednesday, May 27th, Gurden Drake and I learned of problems associated with this study project (known irreverently in the popular press as "the Star Wars Commission"). This study is an interdepartmental effort, ordered by the President, and chaired by the Deputy Secretary of Defense. The Executive Secretary is Air Force Major General Donald L. Lamberson in Dr. DeLauer's office. The study is intended to bring together defensive technology experts, both within and outside of the Government, in a manner similar to the President's Commission on Strategic Forces ("The Scowcroft Commission"). This latter group was properly constituted under the Federal Advisory Committee Act.

Mr. Drake and I attended meetings on Tuesday and Wednesday hosted by LTC Kenneth N. Hollander, Military Executive Assistant to Dr. DeLauer. Also in attendance were John Wilson, the Federal Advisory Committee expert in Doc Cooke's office, and members of MG Lamberson's staff. MG Lamberson joined us late in the Wednesday meeting.

Our concerns arose from the following:

- It appears that an advisory committee has been created without observing the requirements of the Federal Advisory Committee Act (publication of a charter, announcements of meetings, written determination to close meetings to the public when permitted by the Act, coordination with OPM and GSA, etc.).

- A "task order" had been drafted assigning the Institute for Defense Analyses (IDA) responsibility "to help organize and to

provide the necessary facilities, supporting administrative management and technical assistance" and to arrange for and pay our consultants. This appears to us a questionable use of this Federal Contract Research Center (FCRC) for work not within its charter, and a source of substantial problems from a contractual standpoint.

- IDA has been directed to begin work and incur costs, even though the task order has not been approved. We have no authority to direct a contractor to perform and incur obligations without a contract and funds placed in the contract for the purpose.

We understand that an orientation meeting was held yesterday and an intensive schedule of meetings has been established for the next 6 weeks. Obviously, with key people already on the way, it appeared unwise to advocate cancellation of the meetings.

At the last meeting Mr. Drake, John Wilson, and I suggested the following course of action:

- All necessary steps be undertaken immediately to establish this group as a Federal Advisory Committee and to hold its meetings in compliance with FAC rules.

- Rewrite the IDA task order, limiting the scope of the work to technical studies that are properly assignable to this FCRC.

We have just learned from LTC Hollander that the following approach is now planned. MG Lamberson proposes to:

- Create an organization, reduced in size, as a subcommittee under the Defense Science Board, an established DoD Advisory Committee.

- Contract with IDA for technical tasks, establishing safeguards to avoid improper mixing of DoD officials and IDA consultants. The majority of the non-government people who otherwise would have been meeting with DoD people would instead work with IDA. DoD people would not participate in the IDA effort.

This proposal appears acceptable if the participants observe in practice the proper procedures. (For example, if DoD personnel meet with IDA consultants outside of the announced DSB subcommittee meetings there may be established a de facto advisory committee.)

We both are available to work with MG Lamberson's office.

By the way, I met with MG Lamberson in early April to explore conflict of interest issues. I told him about the problems we had faced in the establishment of the Scowcroft Commission and of your participation in their resolution. Because it would be likely that similar questions would arise with his group, matters that potentially were beyond the ability of staff-level lawyers to resolve, I urged him to consult with you. He assured me that he or Dr. DeLauer would meet with you to seek additional guidance. I trust they have done so.

DR

David W. Ream

cc: Gurden Drake
Dennis Trosch
Kathleen Buck

SELECTED DOCUMENTS RELATED TO THE AWARD
OF TWO CONTRACTS BY THE DEPARTMENT OF DEFENSE
TO THE INFORMATION SCIENCES INSTITUTE

Eastport Group

(1) Excerpt from letter dated 5/2/87 from Gen. Abrahamson, Director of Strategic Defense Initiative Organization (SDIO), to Sen. Levin, describing Eastport Group.

(2) Excerpts from "A Report to the Director, SDIO," by Eastport Study Group, dated 12/85.

(3) Excerpts from "Eastport Study Group, 1986 Report," dated 4/15/87.

First Contract to ISI

(1) Letter dated 12/16/85 from Information Sciences Institute (ISI) to Dr. Lau of the Office of Naval Research (ONR).

(2) Cover page of ISI proposal, executed 12/16/85.

(3) Award of contract to ISI, executed 5/20/86.

(4) Excerpts from letter dated 3/14/88 from William H. Carroll, General Counsel of SDIO, to Elise Bean of the Senate Governmental Affairs Committee, on decision to "restructure" ISI contract.

(5) Excerpts from 1985 Broad Agency Announcement issue by ONR.

(6) Contract Modification, executed 7/20/87, restructuring ISI.

Second Contract to ISI

(1) Cover page of ISI proposal submitted in response to ONR contract solicitation on 7/23/87.

(2) Memorandum dated 9/8/87, signed by Andre M. Van Tilborg, member of ONR Technical Evaluation Committee, evaluating contract proposals.

(3) Summary Comments on RFP #N00014-87-R-0022, undated, signed by Dr. Lau.

(4) Evaluation and Recommendation of Competitive Procurement RFP #N00014-87-R-0022, undated, signed by David R. Van Metre, ONR Senior Contract Negotiator.

(5) Determination of Competitive Range, undated, signed by R. Timothy Arnold, ONR Director, Contracts Division.

(6) Memorandum for Record, dated 4/15/88, from David R. Van Meter, ONR Contracting Officer, re-opening negotiations on contract award to ISI.

EXCERPT FROM LETTER DATED MAY 2, 1987
FROM GEN. ABRAHAMSON, DIRECTOR, SDIO, TO SEN. LEVIN

EASTPORT GROUP

The Eastport Group was established in June 1985 to provide a review of SDI battle management computing requirements and make recommendations for a research and technology development program to implement the response. A specific focus of the group was review of ten (10) Phase I architecture contracts for an assessment of their approaches to battle management computing issues. The group was established as a technical review panel under an Air Force Office of Scientific Research (AFOSR) contract with the University of Maryland. Since completion of this study in December 1985 several members of the Eastport Group have provided subcontract support to ANSER under ANSER's contract with SDIO.

Members were reimbursed for the first study under rates negotiated by AFOSR and the University of Maryland. Current services are provided under rates negotiated by ANSER and the individuals.

Membership is as follows:

Dr. Danny Cohen, Chairman (consultant)
Information Sciences Institute
University of Southern California
4676 Admiralty Way
Marina del Rey, California 90292-5950

Dr. Bijoy Chatterjee (consultant)
Deputy Director, Advanced Technology
ESL/TRW
495 Java Drive
Sunnyvale, California 94088-3510

Dr. Richard Lau (government employee)
Office of Naval Research
Code 411
800 North Quincy Street
Arlington, Virginia 22217

Dr. Richard Lipton (consultant)
Department of Computer Science
Princeton University
Princeton, New Jersey 08540

Maj Gen William MacLaren (ret) (consultant)
Vice President
V. Garber International Associates
Crystal Gateway 3
Suite 1105
1215 Jefferson Davis Highway
Arlington, Virginia 22202

Dr. David Mizell (consultant)
Information Sciences Institute
4676 Admiralty Way
Marina del Rey, California 90292-5950

Dr. Charles Seitz (consultant)
Professor of Computer Science
Department of Computer Science
California Institute of Technology
Pasadena, California 91125

Dr. Victor A. Vyssotsky (Consultant)
Executive Director, Research Information Science Division
AT&T Bell Telephone Lab
600 Mountain Avenue
Murry Hill, New Jersey 07974

Dr. Alan J. Smith (served only on the 1985 group)
Associate Professor, Computer Science Division
University of California at Berkeley
Berkeley, California 94720

Excerpts From

Eastport Study Group

SUMMER STUDY 1985

A Report to the

Director

Strategic Defense Initiative Organization

December 1985

B. Recommendations

The panel recommends that SDIO:

- Initiate a study of communications architectures beyond those implied by Volume V of the Fletcher Report. In particular, evaluate the concept of a dedicated communication network. If this evaluation shows promise, a spaceborne prototype network should be designed, implemented, and deployed for final evaluation. The emphasis should be placed on low cost via mass production and deployment options.
- Pursue research and development of the algorithms and protocols for operating the recommended store-and-forward communications network. SDIO should address the development of protocols as early as possible.
- Pursue research and development for advancing the communication technology toward the special requirements of the envisioned strategic defense system. Pay attention early to development of new security systems.
- Develop simulation of the spaceborne communication networks to study system and deployment options.
- Establish a computer communication network (SDInet) to facilitate cooperation and information exchange among SDIO contractors.

C. Summary

Research and development are required for general communications architectures, for spaceborne networking, for SDI-oriented protocols, and for advancing the spaceborne transmission technology. The entire security issue requires special early attention because this is expected to be a *very* long process.

The concept of a dedicated spaceborne communications network should be investigated.

SDIO should install a computer communications network to improve cooperation among its various contractors, and to serve also as a testing grounds for distributed system architecture.

EASTPORT STUDY GROUP

1986 REPORT

15 APRIL 1987

ALL DISTRIBUTION LIMITED

Further dissemination only as directed by
SDIO/SY, April 1987. , or higher DOD authority.

ANSER
Suite 800
1215 Jefferson Davis Highway
Arlington, Virginia 22202

EASTPORT 86 REPORT

BACKGROUND

The EASTPORT Study Group, composed of individuals with widely recognized expertise, was initially appointed in 1985 by the Strategic Defense Initiative Organization "to devise an appropriate computational/communications response to the (strategic defense battle management) problem and make recommendations for a research and technology development program to implement the response." The EASTPORT Study Group met during 1985 and rendered a report to the Director, Strategic Defense Initiative Organization in December of that same year. Many of the recommendations contained in the report have had a significant impact on the direction that the battle management/command control and communications program has taken. Consequently, the Strategic Defense Initiative Organization decided to continue the EASTPORT Study Group in 1986.

1986 ACTIVITIES

Unlike the tasking for the 1985 study which addressed the overall battle management program, the 1986 EASTPORT Study Group was charged to address specific areas of the computational/communications aspects of the battle management program that were of particular interest to the Strategic Defense Initiative Organization. However, two topics, the National Test Bed and the procurement of quality software, were addressed at some length throughout the course of 1986.

1. National Test Bed (NTB) issues ranged from basic operational concepts to hardware and software requirements for the National Test Facility (NTF). The Director, Joint Program Office-National Test Bed (JPO-NTB) attended the EASTPORT Study Group meetings when the NTB/NTF were scheduled agenda items. The issues discussed were particularly important because of NTB schedules and NTF contracting schedules. EASTPORT Study Group recommendations were provided informally to the Director, JPO-NTB and the NTB Ad Hoc Advisory Group.

2. The ability to procure quality software was recognized by the Strategic Defense Initiative Organization as critical not only to the development of a viable Strategic Defense Initiative system but also to the acquisition of a competent NTB. Because of the expertise of its membership, the EASTPORT Study group was a natural source of advice on several alternatives to the procurement of quality software. Each alternative was found to have some merit but none were sufficient unto themselves. These findings were communicated through informal recommendations made to members of the Strategic Defense Initiative Organization.

PURPOSE OF REPORT

In 1986 the EASTPORT Study Group enjoyed a very close working relationship with not only the Director, Strategic Defense Initiative Organization but also with the members of his staff. Consequently, there was continuous information exchange between members of the Strategic Defense Initiative Organization and the EASTPORT Study Group. This obviated the need for formally communicating findings and recommendations of the EASTPORT Study Group.

However, for reasons such as the importance of the continuing interchange during the year among members of the EASTPORT Study Group and the Director and his staff and for an historical trace as new personnel are assigned to the Strategic Defense Initiative Organization, the Strategic Defense Initiative Organization requested ANSER, as part of Subtask (i) under Task V within ANSER's contract No. MDA 903- 85-C-0049, to task the EASTPORT Study Group to assemble records and briefing materials to document the essence of 1986 activities.

INFORMATION SCIENCES INSTITUTE

UNIVERSITY OF SOUTHERN CALIFORNIA

4676 Admiralty Way Suite 10
Marina del Rey, California 90292-60
213/822-15

16 December 1985

Dr. Richard Lau, Scientific Officer
Office of Naval Research, Code 1111
800 N. Quincy St.
Arlington, VA 22217

Re: "Proposal for SDI Communication Research"
ISI Proposal Number: 85-ISI-16

Dear Dr. Lau:

The Information Sciences Institute (ISI) of the University of Southern California is pleased to submit the enclosed proposal for your consideration.

ISI proposes to conduct research leading to the design of the following: the global communication for the strategic defense system, the SDINET; a centralized online coordination procedure; and, graphics tools for displaying orbital assets.

A cost estimate in the amount of $5,310,418 is also enclosed.

Sincerely,

Keith W. Uncapher
Executive Director

KU:BD:rk
Encl.: Proposal

cc: D. Cohen, USC/ISI
J. Postel, USC/ISI
R. Brown, USC/ISI

RESEARCH PROPOSAL COVER PAGE

DATE SUBMITTED: 12 19 85

DO NOT USE THIS BLOCK

1. TO (Name and copies of proposal to)

N
S. ...of Naval Research

...SS (Street, City, State, Zip)
...irth Quincy Street
A... ...gton, VA 22217-5000
Attn: Dr. Richard Lau, Code 411

2. FROM (Name and address of offeror)

a. NAME
University of Southern California

b. ADDRESS (Street, City, State, Zip)
Department of Contracts & Grants
University Park, Los Angeles, CA 90089-1147

c. IDENTIFICATION NUMBER

3. SCIENTIFIC FIELD
Mathematics

4. TYPE OF ORGANIZATION (X one)
[ ] a. Educational institution
[ ] b. Other nonprofit

5. TITLE OF PROPOSAL
SDI Communication Research

6. PROPOSAL ALSO BEING SUBMITTED TO
Not Applicable

7. PROPOSED AMOUNT
$ 5,310,418.00

8. REQUESTED DURATION
36 months

9. REQUESTED START DATE (YYMMDD)
86 04 01

10. TYPE OF CONTRACT (X one)
[ ] a. Cost Plus Fixed Fee
[ ] b. Cost, No Fee
[ ] c. Cost Sharing *

11. PROPOSAL VALID UNTIL (Minimum 6 months)
86 06 19

12. PRINCIPAL INVESTIGATOR(S)

a. Name	b. Department	c. Telephone Number
Danny Cohen	Information Sciences Institute	(213) 822-1511

13. ADMINISTRATIVE REPRESENTATIVE AUTHORIZED TO CONDUCT NEGOTIATIONS

a. Name	b. Department	c. Telephone Number
Beverly A. Hartmeyer	Contracts and Grants	(213) 743-7762
Mark S. Coburn	Contracts & Grants	(213) 743-7762

14. OFFEROR'S STATEMENT: (See Item 7) (Identify enclosures or page number(s) in appropriate block. If page numbers, precede number(s) by "pg.")

Technical
Prices
N/A [ ] (1) Title and abstract of proposed effort
N/A [ ] (2) Statement of Work
N/A [ ] (3) Discussion of background, objectives, approaches, and anticipated results
[ ] (4) Names and brief biographical information of key personnel "Appendix B

Financial
N/A [ ] (1) Cost estimate (includes fee (see 15.1411 or equivalent)
N/A [ ] (2) Type of support (other than financial, if any, required of the Government, e.g., facilities, equipment, materials, or personnel resources)

Administrative
N/A [ ] (1) Statements, if applicable, regarding cost sharing, organizational conflicts of interest, status of security clearances, environmental impact, and previous or anticipated experience in the field covered by the proposal.
N/A [ ] (2) Statement as to how it is necessary to acquire property, if any, with contract funds (See FAR 45.202) "appear ... 12/16/85
[ ] (3) SIGNED REPRESENTATIVE

a. Name
Cornelius J. Pings

b. Signature

c. Title
Senior Vice President for Academic Affairs & Provost

d. Date Signed (YYMMDD)
85 12 16

* Form ... 12/78

SHORT FORM RESEARCH CONTRACT (SFRC) / MODIFICATION (S) PAGE 1 OF 2

1. SFRC NUMBER AND MODIFICATION NUMBER (If applicable): N00014-86-K-0311

2. REQUISITION/PURCHASE REQUEST/PROJECT NUMBER: g40004SWP01/4-15-86 (1111)

3. PERIOD COVERED BY SFRC (Including modification if applicable) (YYMMDD): FROM 86APR01 THROUGH 89MAR31

4. EFFECTIVE DATE (Modification only) (YYMMDD):

5. AUTHORITY FOR OTHER THAN FULL AND OPEN COMPETITION: N.A.

6. SUBMIT INVOICES TO ADDRESS: [X] IN BLOCK 8 [ ] ON CONTINUATION SHEET [ ] COGNIZANT AUDIT OFFICE

7. ISSUED BY

a. NAME: Department of the Navy
Office of Naval Research

b. CODE: N00014

c. ADDRESS (Street, City, State, Zip):
800 North Quincy Street
Arlington, Virginia 22217-5000
Attn: Code 1511A:LCM

8. ADMINISTERED BY

a. NAME: SCD-C
Office of Naval Research
Resident Representative

b. CODE: N62887

c. ADDRESS (Street, City, State, Zip):
1030 East Green Street
Pasadena, California 19906-2458

[ ] SPECIAL INSTRUCTIONS INCLUDED ON CONTINUATION SHEET

9. CONTRACTOR

a. NAME: University of Southern California

b. CODE: 1B729

c. ADDRESS (Street, City, State, Zip):
Department of Contracts and Grants
University Park
Los Angeles, California 90089-1147

10. PAYMENTS WILL BE MADE BY

a. NAME: Commanding Officer
U.S. Navy Regional Finance Center

b. CODE: N00179

c. ADDRESS (Street, City, State, Zip):
CM 3, Room 206, Attn: Code 40
Washington, D.C. 20371-5400

11. SCIENTIFIC PROGRAM OFFICER

a. NAME: Dr. Richard L. Lau
Code 1111MA, (202) 696-4316

b. CODE: N00014

c. ADDRESS (Street, City, State, Zip):
Mathematics Division
Office of Naval Research
800 North Quincy Street
Arlington, Virginia 22217-5000

12. PRINCIPAL INVESTIGATOR(S) (List name(s)):
Danny Cohen

13. CONTRACTOR'S AGREEMENT (If applicable)

CONTRACTOR'S AGREEMENT (Contractor is required to sign this document and return ____ copies to issuing office) CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS OR PERFORM ALL SERVICES SET FORTH IN THE PROPOSAL IDENTIFIED IN BLOCK 19.

14. AWARD (If applicable)

X — AWARD (Contractor is not required to sign this document) YOUR PROPOSAL IDENTIFIED IN BLOCK 19, INCLUDING THE ADDITIONS OR CHANGES MADE BY YOU, WHICH ARE SET FORTH IN FULL, IS HEREBY ACCEPTED. THIS AWARD CONSUMATES THE CONTRACT WHICH CONSISTS OF YOUR PROPOSAL AND THIS AWARD. NO FURTHER CONTRACTUAL DOCUMENT IS NECESSARY.

15. CONTRACTOR REPRESENTATIVE INFORMATION

a. NAME OF COMPANY | b. TITLE

c. TYPED NAME | d. SIGNATURE | e. DATE SIGNED (YYMMDD)

16. UNITED STATES OF AMERICA CONTRACTING OFFICER INFORMATION

a. TYPED NAME: R. H. REGISTER
CONTRACTING OFFICER

b. SIGNATURE: R H Register

c. DATE SIGNED (YYMMDD): 5/20/86

17. ADVANCE PAYMENTS (If one)

XX — a. ADVANCE PAYMENT POOL CONTRACT (See Block 28)

b. NOT AN ADVANCE PAYMENT POOL CONTRACT

DD Form 2222, 84 APR — Previous editions are obsolete. — NAVONR OVERPRINT (5-84)

CONTRACT NUMBER N00014-86-K-0311

SHORT FORM RESEARCH CONTRACT (SFRC) /MODIFICATION | PAGE 2 OF 2

18. ACCOUNTING AND APPROPRIATION DATA

AA 9760400.2504 250 63223 I 000014 2D 000000 0000B4140K00 $1,157,000.00
NR 040000SWP01, FRC: 0041

CONTRACT REVIEWED FOR FISCAL DATA AND SIGNATURES BY _____ for COMPTROLLER, ONR

19. BASIS FOR AWARD OR MODIFICATION (X and complete as applicable)

X a. UNSOLICITED PROPOSAL INCORPORATED BY REFERENCE
(1) DATE (YYMMDD) 16 December 1985 and unilateral lettersdated 19 March 1986. 28 Apr 198
(2) TITLE "SDI Communication Research" 6 May 1986, 12 May 1986, and 16 May 1986

X b. ATTACHMENTS (Specify)
Continuation Sheets for Blocks 25, 27 and 28 and Attachment Number 1 - Subcontracting Plan - 15 pages

c. OTHER (Specify)

20. AMOUNT OF THIS ACTION $5,309,000.00

21. CUMULATIVE FUNDING DATA (Initial award and all modifications)
a. TOTAL FUNDS OBLIGATED $ 1,157,000.00
b. PERIOD COVERED BY OBLIGATED FUNDS (YYMMDD)
FROM 86APR01 THROUGH 86AUG01

22. CUMULATIVE COST DATA (Initial award and all modifications)

a. ESTIMATED COST	$5,309,000.00	
(1) FEE (If any)	$ 0	
(2) TOTAL AMOUNT	$5,309,000.00	/100%
b. CONTRACTOR COST SHARING	$ 0	/ 0%
c. TOTAL RESEARCH PROJECT COST	$5,309,000.00	/100%

23. OPTIONS

a. OPTION NUMBER	b. AMOUNT	c. PERIOD
(1)		
(2)		
(3)		
(4)		

SEE CONTINUATION SHEET

24. GENERAL PROVISIONS. THE CLAUSES SET FORTH IN DFARS 52.235-7005 IN EFFECT ON (Enter date) 86MAR19 ARE INCORPORATED BY REFERENCE AS PART OF THIS CONTRACT

25. REQUIRED REPORTS

	a. NUMBER	b. DATES REQUIRED
FINAL TECHNICAL X	Per Cont. Sheet	PER DFARS
ANNUAL LETTER X	" "	52.235-7005
Quarterly expenditure X		
X SEE CONTINUATION SHEET		

26. a. PRE SFRC COST (See FAR 31.202 and 31.702) $
b. PERIOD OF PRE SFRC COSTS (YYMMDD) FROM TO

27. PROPERTY MATTERS (X one)
XX a. APPROVAL REQUIRED PRIOR TO ACQUISITION OF PROPERTY IDENTIFIED ON CONTINUATION SHEET
b. PROPERTY FOR WHICH DETERMINATION REGARDING TITLE IS DEFERRED IS IDENTIFIED ON CONTINUATION SHEET.

28. OTHER TERMS AND CONDITIONS / CONTINUATION SHEET

See Continuation Sheets

DD Form 2222, 84 APR

85-796 267

DEPARTMENT OF DEFENSE
STRATEGIC DEFENSE INITIATIVE ORGANIZATION
WASHINGTON, DC 20301-7100

GC

March 14, 1988

Ms. Elise Bean
Subcommittee on Oversight
of Government Management
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510-6250

Dear Ms. Bean:

This is in response to your request for information about a contract awarded to the Information Sciences Institute of the University of Southern California.

On May 20, 1985, the Office of Naval Research (ONR) awarded contract N0014-86-H-0311 to the University of Southern California for SDI Communication Research. The contract was to be completed on March 31, 1989. At award, the estimated contract cost was $5,309,000. It was to be performed without fee. The contract was to be incrementally funded and the amount placed on contract at award was $1,157,000.00 (Enclosure 1). The contract was awarded as competitive pursuant to Subpart 6.102(d)(2) of the Federal Acquisition Regulation. The Broad Agency Announcement (BAA) under which award was made is at Enclosure 2.

In March 1987, a news account, stating that there may have been other sources available to perform the contract, resulted in review of the award by senior contracting, scientific and legal officials at ONR. Contracting and legal officials concluded that the University of Southern California proposal may not have been within the scope of the BAA for ONR long range scientific products, and directed a further review of the potential effects of terminating the contract. Based on this further review, the contract was restructured to (1) eliminate requirements which had not yet been substantially performed, (2) reduce the period of performance by sixteen months, and (3) reduce the estimated cost to $2,562,000. Modification P002 effecting these changes to the contract and adding the final funding increment is set forth at Enclosure 3.

ONR advises that the work eliminated by Modification P0002 was incorporated into a solicitation under which competitive offers were solicited pursuant to Subpart 15.4 of the FAR. ONR further advises that three offers were received, and that the University of California has been selected for award. The estimated cost of this award is $5,965,356.00.

William H. Carroll

WILLIAM H. CARROLL
General Counsel

Attachments
As stated

EXCERPTS FROM 1985 BROAD AGENCY
ANNOUNCEMENT USED TO AWARD FIRST
CONTRACT TO INFORMATION SCIENCES INSTITUTE

"SPECIAL NOTICES

LONG RANGE SCIENTIFIC PROJECTS. The Office of Naval Research (ONR) is interested in receiving proposals for long-range scientific projects which offer potential for advancement and improvement of naval operations. Info regarding areas of interest and points of contact is contained in a publication called ONR "1", 1982 edition. Requests for this publications should be sent to [ONR] . . . . This notice constitutes ONR's Broad Agency Announcement as contemplated in FAR 6.102(d)(2). This announcement will be open for period 1 Apr 85 to 31 Mar 86. Proposals may be submitted any time during this period. Awards may be made at any time throughout the year. Award decisions will be based on a competitive selection of proposals resulting from a peer and/or scientific review. Evaluations will be conducted using the following evaluation criteria: (1) Overall scientific, technical or socio-economic merits of the proposal. (2) Potential contributions of the effort to the agency's specific mission. (3) The offeror's capabilitites, related experience, facilities, techniques or unique combinations of these which are integral factors for achieving the proposal objectives. (4) The qualifications, capabilities and experience of the proposed Principal Investigator, team leader or key personnel who are critical in achieving the proposal objectives. (5) Realism of the proposed cost and availability of funds. Academic institutions are especially encouraged to participate."

SHORT FORM RESEARCH CONTRACT (SFRC)/ MODIFICAT. (DX) (S) — Form Approved OMB No. 0704- Expires Apr 30.

1. SFRC NUMBER AND MODIFICATION NUMBER (If applicable): N00014-86-K-0311/P00002

2. REQUISITION/PURCHASE REQUEST/PROJECT NUMBER: R&T #s400008sbp02/05 07-87 (1111MA)

3. PERIOD COVERED BY SFRC (Including modifications, if applicable) (YYMMDD) FROM: 86APR01 THROUGH: 87NOV30

4. EFFECTIVE DATE (Modification only) (YYMMDD): 87APR01

5. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION (If applicable): 10 U.S.C. 2304(c)( )

6. SUBMIT INVOICES TO ADDRESS: [X] IN BLOCK 8 [ ] ON CONTINUATION SHEET [ ] COGNIZANT AUDIT OFFICE

7. ISSUED BY

a. NAME: Department of the Navy
Office of the Chief of
Naval Research

b. CODE: N00014

c. ADDRESS (Street, City, State, Zip):
800 North Quincy Street
Arlington, Virginia 22217-5000
Attn: 1511:DRVM

8. ADMINISTERED BY

a. NAME: SCD-A
Office of Naval Research
Resident Representative

b. CODE: N62887

c. ADDRESS (Street, City, State, Zip):
1030 East Green Street
Pasadena, California 19906-2458

[ ] SPECIAL INSTRUCTIONS INCLUDED ON CONTINUATION SHEET

9. CONTRACTOR

a. NAME: University of Southern
California

b. CODE: 1B729

c. ADDRESS (Street, City, State, Zip):
Department of Contracts and Grants
University Park
Los Angeles, California 90089-1147

10. PAYMENTS WILL BE MADE BY

a. NAME: Commanding Officer
U.S. Navy Regional Finance
Center

b. CODE: N00179

c. ADDRESS (Street, City, State, Zip):
CM#3, Room 206, Attn: Code 40
Washington, D.C. 20371-5400

11. SCIENTIFIC PROGRAM OFFICER

a. NAME: Dr. Richard L. Lau
(202) 696-4316

b. CODE: N00014

c. ADDRESS (Street, City, State, Zip):
Mathematics Division
Office of Naval Research (Code 1111MA)
800 North Quincy Street
Arlington, Virginia 22217-5000

12. PRINCIPAL INVESTIGATOR(S) (List name(s))

Danny Cohen
(213) 822-1511

13. CONTRACTOR'S AGREEMENT (X if applicable)

[X] CONTRACTOR'S AGREEMENT (Contractor is required to sign this document and return 2 copies to issuing office) CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS OR PERFORM ALL SERVICES SET FORTH IN THE PROPOSAL IDENTIFIED IN BLOCK 19.

14. AWARD (X if applicable)

[ ] AWARD (Contractor is not required to sign this document) YOUR PROPOSAL IDENTIFIED IN BLOCK 19, INCLUDING THE ADDITIONS OR CHANGES MADE BY YOU, WHICH ARE SET FORTH IN FULL, IS HEREBY ACCEPTED. THIS AWARD CONSUMMATES THE CONTRACT WHICH CONSISTS OF YOUR PROPOSAL AND THIS AWARD. NO FURTHER CONTRACTUAL DOCUMENT IS NECESSARY.

15. CONTRACTOR REPRESENTATIVE INFORMATION

a. NAME OF CONTRACTOR: UNIVERSITY OF SOUTHERN CALIFORNIA

b. TITLE:

c. TYPED NAME: Cornelius J. Pings
Senior Vice President
Academic Affairs and
Provost

d. SIGNATURE: Cornelius J. Pings

e. DATE SIGNED (YYMM): 870716

16. UNITED STATES OF AMERICA CONTRACTING OFFICER INFORMATION

a. TYPED NAME: DAVID R. VAN METRE
Contracting Officer

b. SIGNATURE: David R. Van Metre

c. DATE SIGNED (YYMMC): 7/20/87

17. ADVANCE PAYMENTS (X if applicable)

[ ] ADVANCE PAYMENT POOL CONTRACT PURSUANT TO ATTACHED PAYMENT PROVISION

DD Form 2222, MAY 86 — Previous editions are obsolete.
NAVSUP OVERPRINT (7-86)

SHORT FORM R[illegible]ARCH CONTRACT (SFRC) /MODIFICAT[illegible]

18. ACCOUNTING AND APPROPRIATION DATA

AB 9770400.2504 250 63223 0 000014 2D 000000 s40FB4140K00 $1,005,000.00
R&T #s400008sbp02; FRC: #s40f, dated 07MAY87

CONTRACT REVIEWED FOR FISCAL DATA AND SIGNATURE BY [illegible] 7/21/87
for COMPTROLLER, OCNR

19. BASIS FOR AWARD OR MODIFICATION (X and complete as applicable)

a. PROPOSAL INCORPORATED BY REFERENCE Cost proposal for revised statement of work 15 July 1987

(1) DATE (YYMMDD)

(2) TITLE

b. ATTACHMENTS (Specify)

Attachment number 3, entitled Revised Statement of Work dated 87APR01.
Attachment number 4, entitled Attachment Number 4 For Bilateral Awards Educational Institutions.

c. OTHER (Specify)

The purpose of this modification is to revise the statement of work, reduce the period of performance, reduce the total estimated cost of the effort, and provide the final increment of funds.

20. AMOUNT OF THIS ACTION (INCREMENT) $ 1,005,000.00
(REDUCTION) $ 2,747,000.00

21. CUMULATIVE FUNDING DATA (Initial award and all modifications)

a. TOTAL FUNDS OBLIGATED $2,562,000.00

b. PERIOD COVERED BY OBLIGATED FUNDS (YYMMDD)

FROM 86APR01 THROUGH 87NOV30

22. CUMULATIVE COST DATA (Initial award and all modifications)

a. ESTIMATED COST	$ 2,562,000.00	
(1) FEE (If any)	$ 0	
(2) TOTAL AMOUNT	$ 2,562,000.00	%
b. CONTRACTOR COST SHARING	$ 0	%
c. TOTAL RESEARCH PROJECT COST	$ 2,562,000.00	100%

23. OPTIONS

a. OPTION NUMBER	b. AMOUNT	c. PERIOD
(1)		
(2)		
(3)		
(4)		

SEE CONTINUATION SHEET

24. GENERAL PROVISIONS. THE CLAUSES SET FORTH IN DFARS 52.235-7005 IN EFFECT ON (Enter date) N/A ARE INCORPORATED BY REFERENCE AS PART OF THIS CONTRACT

25. REQUIRED REPORTS

	a. NUMBER	b. DATES REQUIRE
FINAL TECHNICAL		
ANNUAL LETTER		
SEMI-ANNUAL		

SEE CONTINUATION SHEET

26. a. PRE SFRC COST (See FAR 31.302 and 31.702)

b. PERIOD OF PRE SFRC COSTS (YYMMDD)

FROM TO

27. PROPERTY MATTERS (X one)

a. APPROVAL REQUIRED PRIOR TO ACQUISITION OF PROPERTY IDENTIFIED ON CONTINUATION SHEET

b. PROPERTY FOR WHICH DETERMINATION REGARDING TITLE IS DEFERRED IS IDENTIFIED ON CONTINUATION SHEET

28. OTHER TERMS AND CONDITIONS / CONTINUATION SHEET

It is understood and agreed that the total research project cost of $2,562,000.00 shall cover the costs (1) of performing the effort set forth in Attachment No. 3; (2) of providing seven (7) man weeks of transition efforts, if required; and (3) all costs associated with the final close-out of this contract including severance pay, if required.

IVERSITY OF SOUTHERN CALIFORNIA ISI INFORMATION SCIENCES INSTITUTE
4676 Admiralty Way Marina del Rey, CA 90292

SDI COMMUNICATION, GRAPHICS AND SIMULATION RESEARCH

VOLUME I: TECHNICAL PROPOSAL

A Proposal to the Strategic Defense Initiative Organization and the Office of Naval Research, in response to Solicitation Number N00014-87-R-022, issued July 23, 1987

Technical Points of Contact:

Communication: **Jonathan B. Postel**

Graphics: **Richard L. Bisbey**

Simulation: **David W. Mizell**

Administrative Point of Contact:

Beverly A. Hartmeyer

Contract Manager

FOR OFFICIAL USE ONLY

Not releasable under FOIA exemption b(5)

3910
Ser 1133/176
8 Sep 87

MEMORANDUM

From: Code 1133
To: Code 1111MA, Dick Lau
Via: Code 1133, C. Holland

Subj: TECHNICAL EVALUATION OF PROPOSALS RECEIVED IN RESPONSE TO RFP N00014-87-R-0022

1. At your request, I have evaluated proposals received from [redacted], Sparta, Inc., and USC/ISI in accordance with the instructions in the Evaluation Plan.

2. Raw score sheets for each of the three proposals are attached.

3. Narrative evaluations for each proposal follow below:

(a) [redacted]

The proposal submitted by [redacted] is dismal. It demonstrates no appreciation nor understanding of the issues contained in the RFP. The proposal text consists of a grab-bag of software engineering platitudes. This proposal is completely non-responsive and deserves no further consideration.

(b) USC/ISI

The proposal submitted by USC/ISI is a study in contrasts. Section 1 on SDI Network Communication Research is very weak and indicates minimal understanding of SDI network requirements and issues. The proposed approach is much too brief, and subsections 1.3.2 thru 1.3.4 do no more than echo the text from the RFP. On the basis of the material contained in Section 1, ISI is clearly unqualified to perform SOW Tasks 1-4. In addition, the staff for this section is very weak. It seems unlikely that Dr. Postel will be able to devote significant time to these tasks, leaving a large gap in ISI's ability to perform Tasks 1-4.

Section 2 of ISI's proposal is excellent, and clearly represents ISI's major strength in graphics research. The text is responsive and creative.

Section 3 of ISI's proposal, SDI Simulation Research, contains some good ideas such as the use of productions as a BMA language, but it is unconvincing regarding ISI's grasp of SDI modeling. Task 11 is not well-addressed by the proposal, and there is little reason to believe that ISI can provide a credible "SDIO-owned" simulator. Task 15 is also not well-addressed in the proposal.

FOR OFFICIAL USE ONLY

Not releasable under FOIA exemption b(5)

(c) Sparta, Inc.

The Sparta proposal is of generally high quality. Section 2.1 on Communications is very good and demonstrates in-depth understanding of the relevant issues for both SDInet and an operational network for SDI. The staff proposed for Tasks 1-4 appears well-qualified.

Section 2.2, Graphics Research, is somewhat weaker than other parts of Sparta's proposal. The extensive use of Amiga computers for serious graphics research is unappealing. Sparta has clearly done extensive work with animation for SDI and is quite familiar with many potential technologies for use in SDI graphics displays. However, Sparta's staff for graphics tasks is not strong in a basic research sense.

Section 2.3 of Sparta's proposal clearly demonstrates Sparta's pre-eminent position with SDI modeling and simulation. Sparta presents a convincing case that they understand SDI simulation better than anyone else, and that they have the tools to build on from that base. Sparta's proposed task leader Mr. Elliott is well known in the BMD community as having long experience in simulation of strategic defense systems and scenarios. Sparta's corporate role in SDI BM analysis and BM/C^3 System definition provide them with an excellent position for ensuring high fidelity distributed simulations. The use of a graphic-oriented technique to describe BM algorithms is a worthwhile approach.

4. After having carefully reviewed each proposal, my suggestion would be to create two research efforts: ISI to do all graphics research, Sparta to do all communications and simulation research.

ANDRE M. VAN TILBORG
Program Manager, Systems & Software

SUMMARY COMMENTS
RFP N00014-87-R-0022

The overriding issue for two of the evaluators, which probably determined the outcome of the competition, was that of approach and how the approach affected and reflected the nature of the products to be delivered as perceived by the proposers. The ISI approach, both implied and explicit, is to look for fundamentally new and better ways of solving unsolvable problems (e.g., distributed simulation) or evolving technologies into a form useful for unique SDI needs (e.g., graphics for battle management). Sparta, on the other hand, pretty much uniformly adopted the engineering or development approach. In this approach what is known about a problem is researched, these known approaches are evaluated by analysis or simulation, and the apparently most desirable approach is applied to the problem. This approach, by its nature, precludes innovation.

The reviewers were unanimous that the communications portion of the Sparta proposal is superior to the corresponding portions of the ISI proposal, principally because the ISI communications portion contained almost no detail. The reviewers were also unanimous that the ISI graphics section is superior to the Sparta graphics proposal. On the simulation sections opinions were somewhat mixed depending on how much the reviewers valued innovation in the distributed aspect of the simulation work and how much emphasis they put on experience with actual SDI simulations.

Overall ISI was the winner in a close competition because of their emphasis on innovation in answering an RFP in which innovation was stressed. The opinions of the reviewers were reasonably consistent, and even throwing out the few outliers among the individual scores would have changed the relative scores by only one point out of a total difference of eight points.

(Signature of Richard Lau)

Evaluation and Recommendation of Competitive Procurment
RFP N00014-87-R-0022

1. PR S4000095BP01, was received in Code 15 on 22 May 1987. Subject RFP was issued on 23 July 1987 with proposals due 28 August 1987. A pre-proposal conference was held on 6 August 1987. At the time set for receipt of proposals, three offers had been received:

a) Electronic Operational Computing Inc.

b) Sparta Inc.

c) University of Southern California, Information Sciences Institute

2. On 31 August 1987, the above proposals were submitted to Dr. Richard Lau, Chairman of the Technical Evaluation Panel. On 9 October 1987, the Technical Evaluation Report was received in Code 15. On 22 October 1987, copies of the cost proposals for Sparta and USC were submitted for review by the evaluators. In addition, they were requested to submit any questions which would help clarify the technical proposals. On 3 November 1987, questions directed at USC were received and also a draft of comments concerning cost.

On 5 November 1987, USC was requested via phone and letter to clarify their proposal and on 13 November 1987, that response was received. Since the ONR SO was on travel, the response was not forwarded until 23 November 1987 and his comments were returned on 25 November 1987. In essence the SO stated that USC's clarification removed the initially perceived weaknesses in that offeror's proposal.

3. a. The technical evaluation panel noted that Electronic Operational Computing Inc., had submitted an unacceptable proposal which indicated a lack of understanding of the RFP requirements.

b. Sparta's proposal was considered very good especially in the area of communications. but, Sparta's overall presentation was downgraded because they chose an engineering/developmental approach as opposed to the RFP's stated intent of basic research and the desire for innovative approaches to solving these problems. Sparta offered a CPFF of $4,010,383.00.

c. The USC/ISI proposal was also well received by the evaluators except that the communications area lacked detail. As noted in paragraph 2 above, USC's response to specific questions removed any doubts which the evaluators previously had held. USC/ISI made a cost reimbursement offer of $6,340,025.

4. A review of the technical evaluation indicates that based on points, USC is the technical winner and even if Sparta is given the full five points for cost, USC still maintains their edge. But, I was concerned over the fact that only two evaluators mentioned the fact that the Sparta proposal was not innovative and only one evaluator seriously downgraded the Sparta proposal for this deficiency. Therefore, I spoke with Dr. Bobby Junker, Director of the Mathematical and Physical Sciences Directorate, and asked his opinion of this possible discrepancy. Dr. Junker indicated that the true purpose of this program was to extend science through the use of innovative approaches.

Based on technical scores it would appear Sparta has submitted an acceptable technical proposal rated only 7.9 points less than the USC proposal. But, based on 1) the comments of two of the three evaluators, 2) the Technical Evaluation Panels' Summary Comments, and 3) the additional inputs by Dr. Junkers, it is determined that more weight must be given to the narrative comments than to the scores. Thus, since the Sparta proposal chose a more engineering/developmental approach as opposed to the RFP's statement that this is basic research/applied research effort, and since Sparta's chosen approach precludes innovation, which is a critical evaluation factor, and finally, since Sparta would be required to submit a new technical proposal in order to satisfactorily respond to this RFP's basic research requirement, I recommend that the Contracting Officer declare the Sparta proposal non-responsive without any chance to receive this award. Furthermore, I recommend that negotiations be conducted with the only acceptable offeror, USC/ISI.

RECOMMENDATION

Based on the above information, I recommend that only USC be considered in the competitive range and that negotiations be conducted with only that one offeror.

DAVID R. VAN METRE
Senior Contract Negotiator

Determination of Competitive Range

Based upon the technical evaluation report, and the negotiator's evaluation, I determine that the competitive range for RFP N00014-87-R-0022 shall consist of only the University of Southern California, and that negotiations will be conducted with only that offeror.

R. Timothy Arnold

R. TIMOTHY ARNOLD
Director, Contracts Division

DEPARTMENT OF THE NAVY
OFFICE OF THE CHIEF OF NAVAL RESEARCH
ARLINGTON, VIRGINIA 22217-5000

IN REPLY REFER TO
Ser 15/079
15 Apr 88

MEMORANDUM FOR RECORD

Subj: TELCON TODAY BETWEEN E. BEAN, SENATOR LEVIN'S OFFICE, AND D. VAN METRE

Encl: (1) Technical Evaluations (11 pgs.)

1. Discussed the pending award under ONR Request for Proposals N00014-87-R-0022.

2. In preparing for next week's hearing, ONR management reviewed the file and determined that the record dictated a need for further discussion with both Sparta and the University of Southern California/ISI. We will be discussing these negotiations with SDIO today. The competition is still ongoing and therefore, the documents you have previously received and all of the enclosed eleven pages of the technical evaluation of proposals represent only a partial record and do not reflect ONR's decision to reopen negotiations.

3. The "For Official Use Only" marking is not a security classification but rather, an indication that these are internal government documents.

4. The enclosed documents are provided only for the use of Senator Levin as they may apply to the Senate Committee for Governmental Affairs hearing scheduled for 19 April 1988.

DAVID R. VAN METRE
Contracting Officer